

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF  
PENNSYLVANIA

Thrivest Specialty Funding, LLC

Petitioner,

v.

William E. White,

Respondent.

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Case No. 2:18-cv-1877

Judge Brody

**RESPONDENT'S APPLICATION TO VACATE THE EMERGENCY ARBITRATOR'S  
INTERIM AWARD OF EMERGENCY RELIEF IN RESPONSE TO THRIVEST'S  
EMERGENCY MOTION TO CONFIRM ARBITRATION AWARD**

In response to Thrivest's Emergency Motion to Confirm Arbitration Award, William E. White (the "Respondent"), requests respectfully that the Court vacate the Emergency Arbitrator's Interim Award of Emergency Relief entered in the matter captioned *Thrivest Specialty Funding, LLC v. White*, AAA Case No. 01-18-0001-4765 on June 4, 2019 (the "Emergency Award"). The reasons for this application are set forth in the attached memorandum.

Respectfully submitted,

/s/ Robert C. Wood  
Robert C. Wood (0071861)  
THE LAW OFFICES OF ROBERT C. WOOD  
1907 Leonard Ave., Suite 100  
Columbus, Ohio 43219  
(614) 252-3146 (Telephone)  
(614) 258-3505 (Facsimile)  
rwood@rwoodlaw.com

*Counsel for the Respondent*

Dated: June 25, 2019

**MEMORANDUM IN SUPPORT OF RESPONDENT’S APPLICATION TO VACATE  
THE EMERGENCY ARBITRATOR’S INTERIM AWARD OF EMERGENCY RELIEF  
IN RESPONSE TO THRIVEST’S EMERGENCY MOTION TO CONFIRM  
ARBITRATION AWARD**

**I. RELEVANT BACKGROUND**

On April 11, 2018, Thrivest commenced arbitration (the “Demand”)<sup>1</sup> against Mr. White in the matter captioned *Thrivest Specialty Funding, LLC v. William E. White*, 01-18-0001-4765, pursuant to the Non-Recourse Finance Transaction (Sales and Purchase Agreement) dated December 16, 2016 (the “Assignment Agreement”). On May 1, 2018, Thrivest filed a Complaint to Compel Arbitration in the United States District Court for the Western District of Pennsylvania which was transferred to this Court on May 4, 2018.<sup>2</sup> This matter was dismissed on August 30, 2018.<sup>3</sup> On April 26, 2019, the United States Court of Appeals for the Third Circuit remanded this matter for further proceedings.<sup>4</sup>

**II. LAW AND ARGUMENT**

**A. Under the Express Terms of §4 of the Federal Arbitration Act (“FAA”), the Court is required to adjudicate issues regarding the failure to comply with Arbitration Agreements.**

In relevant portion, §4 of the FAA provides that “if the . . . failure, neglect, or refusal to perform [the Arbitration Agreement]. . . be in issue, the court shall proceed summarily to the trial thereof.” *Id.* See also *Nuclear Installation Services, Co. v Nuclear Services Corp.*, 468 F. Supp 1187, at 1190 (E.D. Pa. 1979) (“If the Court finds that there is a dispute as to the making of the agreement to arbitrate or as to a breach of that agreement, it must proceed to trial on the disputed issue.”)

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<sup>1</sup> Dkt. 1.

<sup>2</sup> See *Thrivest Specialty Funding v. William E. White*, 2:18-cv-00563 (W.D. Pa. May 4, 2018).

<sup>3</sup> Dkt. 13.

<sup>4</sup> See *Thrivest v. White*, No. 18-3005, 2019 WL 1868828 (Apr. 26, 2019).

Similarly, the United States Supreme Court has long held that it is the province of a federal court to consider issues relating to the making and performance of the agreement to arbitrate. See *Buckeye Check Cashing, Inc. v. Cardegna*, 546 U.S. 440, 445-446 (2006)(citing *Prima Paint Corp. v. Flood & Conklin Mfg. Co.*, 388 U.S. 395, 404 - 404 (1967) (“a federal court . . . may consider. . . the issues relating to the making and performance of the agreement to arbitrate”). Here, Mr. White’s challenge is to the arbitration agreement, itself, not the Assignment Agreement as a whole. Accordingly, this Court - and not an Arbitrator - should consider the challenge.

**B. The Court must determine whether Thrivest’s failure to satisfy the conditions precedent renders the Arbitration Agreement unenforceable.**

Under Section 6(z) of the Assignment Agreement (the “Arbitration Agreement”): (1) written notice of a dispute; (2) a meeting among Thrivest and Mr. White in Philadelphia, PA “to attempt to resolve the dispute without the necessity of moving forward with binding Arbitration through the American Arbitration Association (‘AAA’)” within 30 days of the written notice; and (3) the expiration of 60 days from the meeting of the parties are all preconditions to demanding Arbitration.

Given the significant expense associated with Arbitration, these preconditions are the separate and valuable consideration upon which the Arbitration Agreement is based, and the parties “unconditionally” agreed to observe in the event of a dispute. It is undisputed that the Thrivest failed to provide the requisite written notice of a dispute, meet with Mr. White in Philadelphia, or wait 60 days after the meeting prior to demanding arbitration. These omissions are a material breach of the Arbitration Agreement. The Court, not an arbitrator, is tasked to determine whether this breach excuses the performance of Mr. White under the Arbitration Agreement, or otherwise renders it unenforceable. See *Buckeye Check Cashing, Inc. v.*

*Cardegna*, 546 U.S. 440, 445-446 (2006). Accordingly, Mr. White submits that arbitration cannot be compelled under these circumstances.

**C. Thrivest concedes that it failed to perform certain conditions precedent expressly required under the Arbitration Agreement prior to demanding Arbitration.**

At footnote 2 to the Demand, Thrivest admits that it failed to satisfy certain conditions precedent prior to commencing arbitration pursuant to the Arbitration Agreement:

Although the Arbitration Clause encourages a pre-arbitration meeting in Philadelphia for the purpose of discussing resolution, such a meeting is not practicable in view of White's health and the impending April 12, 2018 deadline imposed by White for Thrivest to accept rescission of the Agreement. . .

Id.

In making this concession, Thrivest mischaracterizes the express mandates of the Arbitration Agreement as language that "encourages" rather than requires that certain preconditions be fulfilled prior to demanding arbitration. It is well settled in Pennsylvania, however, that "arbitration agreements are to be strictly construed and not extended by implication." See *Callan v. Oxford Land Dev., Inc.*, 858 A.2d 1229, 1233 (Pa. Super 2004). Again, the Court, and not an Arbitrator must apply these standards of analysis while adjudicating this challenge to the Arbitration Agreement. See *Buckeye Check Cashing, Inc. v. Cardegna*, 546 U.S. 440, 445-446 (2006).

**D. The Emergency Award is: (1) based upon a manifest disregard for the law; (2) completely irrational; and (3) at odds with this Court's and the Third Circuit's prior dispositions of all similar requests of Thrivest for Emergent Relief.**

Since its inception and throughout the course of this litigation, Thrivest has made numerous applications for emergent relief before this Court *In re: National Football League Players' Concussion Injury Litigation*, Case No. 2:12-md-02323-AB, and the United States

Court of Appeals for the Third Circuit, *In re: National Football League Players' Concussion Injury Litigation*, Case Nos. 18-1040, 18-1482, 18-1639, 18-2184, 18-2582, 18-3005, each of which has been summarily denied.<sup>5</sup> While neither this Court, nor the Third Circuit articulated the reasons for denying every request of Thrivest for emergent relief, it is axiomatic that irreparable loss or damage is, by definition, that which cannot be remedied with money. Given that Thrivest is seeking money damages from Mr. White, it was repeatedly unable to establish the requisite burden to merit the relief requested. This Court and the Third Circuit may have also viewed the emergent requests for the escrow of funds or bonds pending resolution as disguised and/or impermissible attempts to obtain pre-judgment attachment.

**1. The Emergency Arbitrator disregarded and failed to apply the analysis expressly under R-38**

The analysis under Rule-38(b) of the Commercial Arbitration Rules and Mediation Procedures expressly requires a showing of: (1) a need for “emergency relief”; and (2) a need for emergency relief “on an emergency basis.”<sup>6</sup> In order to meet the standard for emergency relief under R-38(e), there must be “immediate and irreparable loss or damage shall result in the absence of emergency relief, and that such party is entitled to such relief.”<sup>7</sup>

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<sup>5</sup> On May 3, 2018, *In re: National Football League Players' Concussion Injury Litigation*, Case No. 2:12-md-02323-AB, the Claimant filed an “Emergency Motion for Limited, Expedited Discovery in Advance of Preliminary Injunction Hearing”(ECF 9957) which was denied. On June 13, 2018, *In re: National Football League Players' Concussion Injury Litigation*, Case No. 2184 Claimant, in file a Motion to Expedite Appeal (Doc. No. 003112955853) (arguing that “there is a serious risk of dissipation that worsens with time”) which was denied. On June 29, 2018, *In re: National Football League Players' Concussion Injury Litigation*, Case No. 2:12-md-02323-AB, Claimant filed a “Motion for Bond Pending Appeal” (ECF 10114-2) (alleging that because “one can reasonably conclude that Mr. White’s medical expenses will mount and his capacity to work will diminish as his ALS progresses” that it “it faces a significant likelihood of irreparable harm”) which was denied. On September 11, 2018, *In re: National Football League Players' Concussion Injury Litigation*, Case Nos. 18-1040, 18-1482, 18-1639, 18-2184, 18-2582, 18-3005, Claimant filed a Motion For the Issuance of a Bond or Escrow Pending Resolution of Appeal (Doc. No. 033113031054) (again making the identical arguments that because “one can reasonably conclude that Mr. White’s medical expenses will mount and his capacity to work will diminish as his ALS progresses” that it “it faces a significant likelihood of irreparable harm”) which was denied.

<sup>6</sup> See Rule 38(b) of Commercial Arbitration Rules and Mediation Procedures.

<sup>7</sup> See Rule 38(e) of Commercial Arbitration Rules and Mediation Procedures.

In determining the Emergency Award, however, the Emergency Arbitrator failed to perform any analysis under Rule-38 whatsoever in blatant disregard of the law.<sup>8</sup> Instead, the Arbitrator, at the urging of Thrivest,<sup>9</sup> focused upon only two factors. First, the likelihood of success on the merits merits. And second, the possibility that funds could be dissipated.<sup>10</sup> Even if this were the applicable standard - and it is not - there is no basis to conclude that either factor is present upon the record before the Arbitrator.

On May 9, 2019, Thrivest directed correspondence to Mr. White requesting that he provide the following in advance of the hearing for emergency relief on May 15, 2019:<sup>11</sup>

1. Mr. White's Notice of Monetary Award Claim Determination from the Claims Administrator (the "Notice of Monetary Award"), including any Monetary Award Calculation Attachment;
2. The documents submitted to the Claims Administrator pursuant to Section VII (Payment of the Monetary Award) of the Notice of Monetary Award, including the Payment Election Form, Form W-9, and Statement of Attorney Fees and Expenses;
3. All documents from the Claims Administrator regarding any pending or finalized liens or any holdbacks relating to such liens, including documents sufficient to identify any portion of Mr. White's award currently being held by the Claims Administrator;
4. Documents sufficient to identify to whom the Claims Administrator distributed Mr. White's monetary award and where Mr. White first deposited the proceeds;
5. An accounting of the award proceeds, detailing any use or transfer of funds and showing where and by whom the proceeds are currently held;
6. Information concerning any other anticipated distributions to Mr. White by the Claims Administrator;
7. Information concerning Mr. White's current assets and liabilities (whether individually or jointly held);
8. Information regarding any significant liabilities or expenses (in excess of \$10,000) anticipated by Mr. White over the next 12 months.

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<sup>8</sup> See generally Determination and Award, Exhibit B to Thrivest's Emergency Motion To Confirm Arbitration Award.

<sup>9</sup> Thrivest Correspondence to Arbitrator dated May 7, 2019, a true and accurate copy of which is attached hereto and incorporated herein at Exhibit A.

<sup>10</sup> See Determination and Award at 16.

<sup>11</sup> Thrivest's Discovery Correspondence to Respondent dated May 9, 2019, a true and accurate copy of which is attached hereto as Exhibit B.

Mr. White objected to production of these documents for purposes of the Emergency Hearing. And on May 15, 2019, the Respondent directed correspondence to the Emergency Arbitrator, which in part, provides that:<sup>12</sup>

The cases the Claimant referenced in its May 7, 2019 correspondence are inapposite. In each instance, the aggrieved party came to the tribunal with known facts that established irreparable harm in the absence of relief. Given that the Claimant can only speculate, and does not have known facts to support its request for emergency relief, it seeks desperately expedited discovery from which it can fish for information that might help it meet the standard. This conduct is improper, however, under R-38. The Claimant must come with known facts which justify a need for emergency relief on an emergency basis - not file the request based upon speculation and then seek discovery to search for them.

On May 13, 2019, via email, the Arbitrator determined that the requested discovery would be considered as a preliminary issue on May 15, 2019.<sup>13</sup> The preliminary discovery issue was discussed as follows:<sup>14</sup>

Mr. Buckley: With respect to the discovery that was sought, you know, I really don't want to delay the hearing. I want to move ahead with that today. . .

Arbitrator: So if you're going forward with the hearing. . .your, in effect, withdraw[al]of your request for the emergence for the Discovery is without prejudice . . .

So, to be clear, to date, Thrivest has not established that any provision in its Assignment Agreement is enforceable, including those that would require Mr. White make the disclose of any information whatsoever to Thrivest. It, nonetheless, sought extensive emergent discovery in advance of the May 15, 2019 hearing. After withdrawing its discovery request, and electing to move forward with the hearing, the Arbitrator concluded, in the Determination and Award, that

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<sup>12</sup> Respondent's Letter to Arbitrator dated May 15, 2019, a true and accurate copy of which is attached hereto as Exhibit C.

<sup>13</sup> Email of Arbitrator dated May 13, 2019, a copy of which is attached hereto as Exhibit D.

**“Respondent through his lack of transparency regarding the status of the settlement funds has created the emergent situation in which he now belatedly finds himself.”**<sup>15</sup>

There is simply no rational basis upon which to support this conclusion. The Arbitrator, in arriving at this conclusion, failed to point to any authority that required Mr. White to make disclosures to Thrivest. The Arbitrator also didn’t find that any provision of the Assignment Agreement is enforceable, including provisions that would require disclosure. In May of 2018, the Arbitrator denied Thrivest’s request for prehearing discovery.<sup>16</sup> On May 15, 2019, Thrivest withdrew its request for pre-hearing discovery as a preliminary matter, and chose to proceed with the hearing. The question, then, is how Mr. White could possibly fail to be transparent, without any obligation make disclosures or to produce information whatsoever. The conclusion is nonsensical.

**2. There is no rational basis for the Arbitrator’s conclusion that Mr. White has likely dissipated the funds**

During the hearing, counsel for Mr. White stated the following in response to concerns that funds have been dissipated:<sup>17</sup>

So, initially, I wanted to point out that to the extent Thrivest is claiming that there’s an emergency, there isn’t. . . Thrivest is in the same position as most litigants at the beginning of litigation. There’s always a chance that at the end of the road you won’t be able to recover. **They haven’t been able to point to . . . any known fact, that indicated that Mr. White hasn’t made provisions to pay them or isn’t willing to pay them.** Just for Your honor’s reference, Mr. White did, in fact, offer to pay them back the \$475, plus a reasonable rate of interest, and Thrivest said it wasn’t interested in that. . . the Monday after the Friday that the decision came out, I called Mr. Buckley. Mr. Buckley didn’t call me. **I called him to offer the \$475 plus a reasonable rate of**

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<sup>14</sup> Transcript of R-38 Emergency Measures of Protection Hearing on May 15, 2019 at 8-13 (“R-38 Transcript”), a true and accurate copy is attached hereto and incorporated herein at Exhibit E.

<sup>15</sup> See Determination and Award at 16.

<sup>16</sup> See Determination and Award at 2.

<sup>17</sup> R-38 Transcript at 82-87



**interest.** He said he wasn't interested. I offered prior to this hearing. . . Let's pick a day. Let's see if we can meet and. . . mediate this . . . in Pittsburgh. Maybe we can get it worked out. . . All I've heard is we want the maximum amount we feel we're due under the contract, plus attorney fees. Otherwise, there's nothing to talk about. (Emphasis Added).

The Arbitrator, in the Determination and Award, also seized upon testimony from class counsel, Mr. Seeger, from the May 2, 2019 hearing wherein Mr. Seeger indicated his belief that Mr. White, at that time, did not have \$750,000 to escrow, and concern that Mr. White would get stuck paying the legal fees of Thrivest.<sup>18</sup> In response to this issue, counsel for Mr. White indicated his belief that "Mr. Seeger had a basis for saying that when he said it."<sup>19</sup> And on May 16, 2019, counsel for Mr. White confirmed to the Arbitrator that Mr. White had not received \$750,000 from the Claims Administrator as of May 2, 2018.<sup>20</sup>

**3. The Emergency Award does not preserve the status quo, is not designed to prevent irreparable harm and confers an unfair advantage upon Thrivest.**

The record of proceedings on May 15, 2019<sup>21</sup> demonstrates clearly that the Emergency Award that Thrivest seeks to confirm was neither obtained in order to address a demonstrable emergency nor to prevent irreparable harm as required under Rule 38. It does not preserve the status quo but rather creates a species of relief the character of which is unprecedented. In effect, the Emergency Award was secured to operate as an insurance policy for Thrivest that has excess coverage in the amount of \$436,296.00 more than Thrivest claims it is owed pursuant to the repayment schedule attached to the Assignment Agreement at Exhibit B as of June 30, 2019.

This result is patently absurd, bears no relationship to rational analysis, and is supported by no legal authority. Particularly, where, here, the Emergency Arbitrator determined that

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<sup>18</sup> See Determination and Award at 15-16.

<sup>19</sup> R-38 Transcript at 62.

<sup>20</sup> See email from Respondent to Arbitrator dated May 16, 2019, a copy of which is attached hereto as Exhibit F and incorporated herein by reference.

approximately \$250,000.00 in legal fees should be set aside without reviewing a single invoice. And instead, relied entirely upon the testimony of Peter Buckley, counsel for Thrivest as follows:<sup>22</sup>

Mr. Buckley: Next, Your honor, I just wanted to, to the extent you wanted any evidence of . . . you know, we've requested an escrow that will provide, you know, not only the amount that's owed today, but also the amount that will be owed if this goes through the foreseeable, you know, arbitration as well as attorney fees that we're claiming under the agreement. I made some representations to Your honor in my submission that I'm prepared certainly to back up . . . but, you know, to date the legal expense here has been approximately \$250,000, which we are seeking to recover under the Agreement, you know, fee-shifting provision and certainly would like Your Honor to consider that as evidence when considering this request and in determining the appropriate amount of escrow.

Arbitrator: Any objection to that, Mr. Wood?

Mr. Wood: Yes, Absolutely.

Arbitrator: I know you object to the relief. My question is do you object to the submission of these documents.

Mr. Wood: Yes, absolutely, Your Honor. . . I don't believe those would be appropriate for the Arbitrator to consider as part of this request.

Arbitrator: All right. . . . I will overrule it without prejudice meaning I am noting your objection to that and will look at it both to admissibility and weight. I'd obviously have to look at the redactions and so forth to make a determination on the objection.

Mr. Wood: Your Honor, I would like to make an additional objection. The fee-shifting provision of the Agreement . . . first requires a breach of the Agreement and there's been no breach by Mr. White. There's been no breach, so any and all expenses, th[e] legal fees they're claiming aren't a result of a breach.

Despite this exchange during the May 15, 2019 hearing, the Emergency Arbitrator did not review any of the legal bills, including the redactions thereto, or make a determination on Mr. White's objection consistent with his representation to the parties. Instead, he simply regurgitated Mr. Buckley's testimony which asserted that Thrivest "has expended nearly

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<sup>21</sup> See generally R-38 Transcript.

\$250,000 in legal fees and expenses on this matter, and has offered “lightly redacted” legal bills<sup>23</sup> in support of its request that that amount be considered pursuant to the fee-shifting provisions. . . .”<sup>24</sup>

Next, while acknowledging Mr. White’s position “that there must first be a breach before the fee-shifting provision would be triggered,”<sup>25</sup> the Arbitrator somehow reasoned, without citing any legal authority whatsoever, that requiring \$250,000 to be escrowed, on an emergency basis, for prospective legal fees and expenses is not a substantive application of the fee-shifting provision of the Assignment Agreement. Again, this result is outrageously irrational and offends notions of fairness and common sense.

#### **4. The Emergency Award is Violative of 28 U.S.C. § 1322**

This Court maintains jurisdiction over this action pursuant to 28 U.S.C. § 1322. The Emergency Award, however, does not require confirmation of a Final Award by this Court prior to disbursement of funds. The Emergency Award provides that “Attorney Wood shall hold the Escrowed Funds in escrow in his trust account pending and subject to a Final Award, further order of the arbitrator, or written agreement signed by the parties.”<sup>26</sup> Accordingly, the Emergency Award was obtained in manifest disregard for the law.

#### **E. The Emergency Arbitrator did not have the authority under the Arbitration Agreement to make the Interim Award the of Emergency Relief.**

In relevant portion, Section 6(z) of the Arbitration Agreement provides that: “Either Buyer or Seller may apply (in the event of an emergent issue) to a Pennsylvania state or federal

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<sup>22</sup> R-38 Transcript at pages 55-58.

<sup>23</sup> No legal bills were submitted to the Arbitrator. The Arbitrator relied entirely upon the testimony of Mr. Buckley.

<sup>24</sup> See Determination and Award at 18.

<sup>25</sup> Id at 18.

<sup>26</sup> See Emergency Arbitrator’s Interim Award of Emergency Relief at 2.

court for interim or emergent relief. . .” Id. The Arbitration Agreement does not confer power upon the Arbitrator to grant emergent relief. Additionally, the Commercial Arbitration Rules and Mediation Procedures, upon which the Interim Award of Emergency Relief is based, are not incorporated into the Arbitration Agreement. “Whether the arbitrators exceeded their authority by awarding interim injunctive relief depends on an examination of the Agreement to determine what remedial powers the Agreement confers upon the arbitrators.” *Island Creek Coal Sales Co. v. Cty of Gainesville, Fl*, 729 F. 2d 1046 (6th Cir. 1984).

### **III. REQUEST FOR HEARING**

For the reasons stated herein, Mr. White requests that the Emergency Award be vacated and the Complaint to Compel Arbitration be denied. Mr. White requests a hearing on this matter to the extent the Court believes it would aid in its consideration.

Respectfully submitted,

/s/ Robert C. Wood  
Robert C. Wood (0071861)  
THE LAW OFFICES OF ROBERT C. WOOD  
1907 Leonard Ave., Suite 100  
Columbus, Ohio 43219  
(614) 252-3146 (Telephone)  
(614) 258-3505 (Facsimile)  
rwood@rwoodlaw.com

*Counsel for the Respondent*

**CERTIFICATE OF SERVICE**

I, Robert C. Wood, hereby certify that the foregoing was electronically filed on this date; it is available for viewing and downloading on the Court's CM/ECF system; and it will be served on all counsel of record via the Court's CM/ECF system.

Dated: June 25, 2019



Fox Rothschild LLP  
ATTORNEYS AT LAW

2000 Market Street  
20th Floor  
Philadelphia, PA 19103-3222  
Tel (215) 299-2000 Fax (215) 299-2150  
www.foxrothschild.com

PETER C. BUCKLEY  
Direct No: 215.299.2854  
Email: PBuckley@FoxRothschild.com

May 7, 2019

**VIA E-MAIL**

The Honorable Steven I. Platt  
The Platt Group, Inc.  
P.O. Box 6604  
Annapolis, MD 21401

**Re: Thrivest Specialty Funding, LLC v. William E. White, No. 01-18-0001-476**

Dear Judge Platt:

I write on behalf of Claimant Thrivest Specialty Funding, LLC in advance of tomorrow's hearing on Thrivest's application for emergency interim relief. Following Thrivest's successful appeal of the District Court's order enjoining this arbitration, Thrivest's application is ripe for disposition.

Pursuant to AAA Rule 38, Thrivest seeks an interim order directing Respondent William E. White to escrow the disputed funds and adequate security in his attorney's trust account pending final disposition of this arbitration. Thrivest is entitled to this relief for two reasons.

**1. Mr. White Has Not Held The Distribution "In Trust" As Required; An Injunction Is Necessary To Protect Thrivest's Property In His Possession.**

In exchange for Thrivest's \$500,000 advance in December 2016, Mr. White agreed to hold the proceeds of his award in the NFL Concussion Class Action (the "Distribution") "in trust" for Thrivest until he satisfied his payment obligations under the Agreement. See Agreement at 2(c)





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(Exhibit A).<sup>1</sup> Indeed, at the time, Mr. White expressly and irrevocably directed that his attorney (Robert C. Wood, Esq.) satisfy his Thrivest obligations from the Distribution in the attorney's escrow account before remitting any balance to him. See Limited Irrevocable Power of Attorney (Exhibit D) and Irrevocable Authorization and Directive (Exhibit F). In that regard, Mr. White committed to pay Thrivest "[w]ithin three (3) business days" of receiving the Distribution and "prior to paying any expenses ... or making any other distributions." See Agreement at 2(c). The interim relief requested here is thus consistent with the parties' intentions as expressed through the Agreement and documents executed contemporaneously.

Moreover, the injunction sought by Thrivest is consistent with Thrivest's ownership of the disputed funds, which Mr. White sold to Thrivest in exchange for the \$500,000 advance more than two years ago. See Agreement at 2(a)(i) ("Seller absolutely ... sells ... to Buyer all rights, title, benefits and interests of Seller in and to ... the TSF Distribution ... and all proceeds of [the] Distribution until Buyer has collected the TSF Distribution"). Because Thrivest holds title to the disputed funds and Mr. White is entitled to hold the Distribution only "in trust" until he satisfies his obligations to Thrivest, it is not appropriate for Mr. White treat the funds as his own while this arbitration is pending.

Under Pennsylvania law (which governs the Agreement), the owner of property is entitled to injunctive relief to preserve and protect the property pending resolution of a dispute. See American Express Travel Related Services Company, Inc. v. Laughlin, 623 A.2d 854, 856-857 (Pa. Super. Ct. 1993) (affirming injunction enjoining the concealing or dissipation of disputed funds held by fiduciary); and East Hills TV & Sporting v. Dibert, 531 A.2d 507, 509 (Pa. Super. Ct. 1987) (holding that seller may be enjoined from using funds in seller's bank so as to prevent potential loss of funds belonging to buyer). Indeed, although Thrivest is requesting only that Mr. White escrow the disputed funds and sufficient security in his attorney's trust account, Pennsylvania law would support an injunction freezing all accounts containing funds claimed by Thrivest. See Citizens Bank of Pennsylvania v. Myers, 872 A.2d 827, 836 (Pa. Super. Ct. 2005) (upholding injunction freezing bank account as necessary to preserve funds belonging to someone other than account holder).

Mr. White has violated the Agreement by treating the Distribution as his own prior to complying with his obligations to Thrivest. As such, Thrivest would be entitled to an injunction compelling Mr. White to escrow his entire \$3.5 million Distribution pending the outcome of this arbitration. Thrivest, however, believes that a more limited injunction would suffice and thus seeks only to

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<sup>1</sup> All exhibit references refer to the exhibits to Thrivest's Demand for Arbitration and Application for Emergency Interim Relief.



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escrow the disputed funds and adequate security for the additional interest and attorneys' fees that are likely to accrue until this dispute is resolved on the merits.

**2. Thrivest Is Likely To Succeed On The Merits And Dissipation Of The Disputed Funds Constitutes Irreparable Harm.**

Thrivest is also entitled to injunctive relief because it is likely to succeed on the merits and, without an escrow of the disputed funds and adequate security, Thrivest will be irreparably harmed by Mr. White's likely dissipation.

Under Pennsylvania law, equitable relief of this nature requires "a showing that [1] plaintiffs are likely to become entitled to the encumbered funds upon final judgment, and [2] without the preliminary injunction, plaintiffs will probably be unable to recover those funds." Patel v. Patel, No. 14-2949, 2016 WL 1720404, at \*2 (E.D. Pa. Apr. 29, 2016) (citing Hoxworth v. Blinder, Robinson & Co., Inc., 903 F.2d 186, 197 (3d Cir. 1990)). AAA Rule 38 requires even less, empowering the emergency arbitrator to issue emergency interim relief upon a showing that "immediate and irreparable loss or damage shall result in the absence of [such] relief."

The Third Circuit has made clear that "Thrivest's contract gave it only the right to receive settlement funds after the funds are disbursed to a class member, and [that] the District Court's power over the funds and the class ends at that point." (Opinion at p. 33). Because the Third Circuit took issue only with assignments that allow the funder to "stand in the shoes" of a class member and request payment directly in the NFL Concussion Class Action (Opinion at p. 27), Mr. White's payment obligation in Section 2(c) of the Agreement is necessarily enforceable. See Agreement at 2(c) ("Within three (3) business days after Seller's collection and receipt ... of any Distribution, Seller shall distribute, or cause to be distributed, all such collections and receipts to Buyer, prior to paying any expenses of Seller or making any other distributions, until Buyer has received the TSF Distribution in full."). Indeed, the Third Circuit said, "[e]ven if the parties had attempted to create a true assignment," the District Court "did not have the authority to preclude Thrivest from litigating any of its remaining rights under the agreement." (Opinion at p. 33).

To the extent that Mr. White will argue any of the "standard contract defenses" highlighted by the Third Circuit as potentially available on a case-by-case basis, Thrivest will address each briefly:

- Capacity to contract. Mr. White has never challenged his capacity to contract, nor could he. His counsel in the District Court and Third Circuit conceded his capacity to enter into the Agreement. Moreover, to confirm Mr. White's diagnosis and capacity to make





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independent legal and financial decisions, Thrivest sought the opinion of Mr. White's treating neurologist at Ohio State, Kevin Weber, M.D. Dr. Weber confirmed Mr. White's ALS diagnosis and his professional opinion that the disease "has in no way impaired [Mr. White's] ability to make his own legal, medical, and financial decisions;" moreover, based on a review of White's medical records, Dr. Weber indicated that Mr. White has never "lacked capacity to make independent legal, medical and financial decisions." See Physician's Statement of Mental Competency (Exhibit B).

- Unconscionability and Fraud. There can be no argument that Mr. White was forced to sign the Agreement or that an agreement advancing him \$500,000 at the lowest, non-recourse rate in the market is so one-sided that he had no meaningful choice but to sign. Thrivest cautioned Mr. White (in bold) to review the agreement with "an attorney and/or a trusted financial advisor ... who can assist [him] in determining whether this transaction will best fulfill [his] financial needs and objectives and protect [his] interests in the event [he] chooses to proceed with this transaction." See Agreement at 6(cc). The Agreement contained clear disclosure of the financial terms and Mr. White initialed every page. What's more, Mr. White's attorney here notarized his signature on the document. There is no basis to challenge enforcement on either unconscionability or fraud grounds.
- Usury. In Obermayer, Rebmann, Maxwell & Hippel v. West, et al., No. 16-1376, 2018 WL 1074310, \*1 (3d Cir., Feb. 27, 2018), the Third Circuit reviewed a non-recourse purchase of future litigation proceeds similar to Thrivest's Agreement with Mr. White. Focusing on substance, not form, the Court explained: "a transaction that neither guarantees the lender an absolute right to repayment nor provides it with security for the debt is not a loan, and as a result, cannot be subject to New York's usury laws." Id. at \*2. Accordingly, the Third Circuit rejected an argument that the purchase agreements were unenforceable because they are usurious. See id. So too here.

But even if the usury laws did apply (which they do not), Thrivest's \$500,000 advance would not have been subject to a maximum interest rate. See 41 Pa. Stat. Ann. § 201 ("maximum lawful rate of interest ... shall not apply to an obligation to pay a sum of money in an original bona fide principal amount of more than ... \$50,000"); see also OH ST § 1343.01 (usury limit not applicable to principal indebtedness over \$100,000).

It is uncontested that Mr. White never paid Thrivest the TSF Distribution after receiving his \$3.5 million Distribution from the Claims Administrator, and he has no defense. As such, Thrivest is likely to succeed on its breach of contract claim. In turn, Thrivest is entitled to recover "all costs and expenses incurred ... (including reasonable attorney's fees) paid to enforce the terms of the



Fox Rothschild LLP  
ATTORNEYS AT LAW

May 7, 2019

Page 5

Agreement.” See Agreement at 5(d). As detailed below, the award in Thrivest’s favor will be substantial.

Despite requests and his obligation under the Agreement to provide such information, Mr. White has never shared any information with Thrivest about his Distribution, nor provided Thrivest with any assurance that the disputed funds have been set aside or that Mr. White is otherwise able to satisfy his obligations under the Agreement. Indeed, during a May 2, 2018 telephonic hearing on Class Counsel’s request for a temporary restraining order enjoining this arbitration, Class Counsel assured the Court that Mr. White “does not have” \$750,000 to escrow as Thrivest had requested at that time. That representation coupled with Mr. White’s lack of transparency and the financial challenges presented by his disease demonstrate that there is a serious risk that Thrivest will receive an award but ultimately be unable to recover.

Under these circumstances and considering that Mr. White has had the benefit of Thrivest’s \$500,000 advance for more than two years, the emergency arbitrator should order him to escrow the disputed funds and adequate security for the additional interest and attorneys’ fees that are likely to accrue until this dispute is resolved on the merits.

### **3. The Emergency Arbitrator Should Order Mr. White To Escrow \$1,250,000 Pending Resolution Of This Arbitration.**

The following schedule tracks “Exhibit B—Repayment Schedule” to the Agreement and shows the amount of the TSF Distribution if paid by the date indicated over the course of the next year:

Date	Amount
5/31/2019	\$ 801,020.80
6/30/2019	\$ 813,703.63
7/31/2019	\$ 826,587.27
8/31/2019	\$ 839,674.90
9/30/2019	\$ 852,969.75
10/31/2019	\$ 866,475.10
11/30/2019	\$ 880,194.29
12/31/2019	\$ 894,130.70
1/31/2020	\$ 908,287.77
2/28/2020	\$ 922,669.00
3/31/2020	\$ 937,277.92





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May 7, 2019

Page 6

4/30/2020	\$	952,118.16
5/1/2020	\$	967,193.36

Throughout this dispute, Thrivest has encouraged Mr. White (through his counsel) to fulfill his obligations under the Agreement or, at the very least, to pay the amount he does not dispute, so as to avoid incurring additional interest. Thrivest's pleas have been met with silence.

In addition, Thrivest has repeatedly cautioned Mr. White (through his counsel) that this dispute is resulting in substantial costs and expenses to enforce the terms of the Agreement. Mr. White has similarly ignored Thrivest's well-intentioned warnings resulting in protracted proceedings in this arbitration, in the District Court, and in the Third Circuit—where, ultimately, Thrivest prevailed as it had predicated when Mr. White first refused to honor the Agreement.

Thrivest's legal expenses with respect only to the proceedings involving Mr. White are in excess of \$235,000 at present, and that amount (and the accumulated interest) will only grow as Mr. White continues to dispute his clear obligations under the Agreement—through which Thrivest provided him a \$500,000 non-recourse advance while he waited years for his anticipated \$3.5 million award in the NFL Concussion Class Action.

Although Thrivest is entitled to freeze Mr. White's entire \$3.5 million distribution, Thrivest respectfully requests that the emergency arbitrator enter interim relief in the form proposed (attached), requiring Mr. White to escrow \$1,250,000 in his attorney's trust account pending final disposition of this arbitration.

Respectfully submitted,

Peter C. Buckley

Enclosure (Proposed Interim Award of Emergency Relief)

cc: Robert C. Wood, Esquire (via e-mail)

**AMERICAN ARBITRATION ASSOCIATION**

THRIVEST SPECIALTY FUNDING, LLC,  
Claimant,

v.

WILLIAM E. WHITE,  
Respondent.

Case No. 01-18-0001-476

**INTERIM AWARD OF EMERGENCY RELIEF**

AND NOW, upon consideration of the Application for Emergency Interim Relief filed by Claimant Thrivest Specialty Funding, LLC and the hearing thereon on May 8, 2019, IT IS HEREBY ORDERED that the Application is GRANTED.

IT IS FURTHER ORDERED as follows:

1. Within two (2) business days, Respondent William E. White shall cause the sum of One Million Two Hundred Fifty Thousand Dollars (\$1,250,000) (the "Escrowed Funds") to be deposited into the trust account of his attorney, Robert C. Wood, Esquire;
2. Within one (1) business day of receipt, Attorney Wood shall provide Thrivest with evidence that Mr. White has so complied and, in addition, furnish evidence of insurance coverage in an amount in excess of the Escrowed Funds;
3. Attorney Wood shall hold the Escrowed Funds in escrow in his trust account pending a final award, further order of the arbitrator, or written agreement signed by the parties;
4. Deposit of the Escrowed Funds as set forth herein shall not alter the parties' rights and obligations under the Agreement, including to the accrual of additional interest on unpaid obligations

5. This Interim Award of Emergency Relief shall be enforceable in any court of competent jurisdiction.

**IT IS SO ORDERED:**

---

The Honorable Steven I. Platt, Emergency Arbitrator



Fox Rothschild LLP  
ATTORNEYS AT LAW

2000 Market Street  
20th Floor  
Philadelphia, PA 19103-3222  
Tel (215) 299-2000 Fax (215) 299-2150  
www.foxrothschild.com

PETER C. BUCKLEY  
Direct No: 215.299.2854  
Email: PBuckley@FoxRothschild.com

May 9, 2019

**VIA E-MAIL (rwood@rwoodlaw.com)**

Robert C. Wood, Esq.  
Wood Law Limited  
68 North High Street  
Building B, Suite 202  
New Albany, Ohio 43054

**Re: Thrivest Specialty Funding, LLC v. William E. White, No. 01-18-0001-476**

Dear Rob:

Thrivest's application for emergency interim relief is scheduled for a hearing on May 15, 2019. In advance of that hearing, I write to request that Mr. White produce the following relevant documents and information:

1. Mr. White's Notice of Monetary Award Claim Determination from the Claims Administrator (the "Notice of Monetary Award"), including any Monetary Award Calculation Attachment;
2. The documents submitted to the Claims Administrator pursuant to Section VII (Payment of the Monetary Award) of the Notice of Monetary Award, including the Payment Election Form, Form W-9, and Statement of Attorney Fees and Expenses;
3. All documents from the Claims Administrator regarding any pending or finalized liens or any holdbacks relating to such liens, including documents sufficient to identify any portion of Mr. White's award currently being held by the Claims Administrator;

A Pennsylvania Limited Liability Partnership

California Colorado Connecticut Delaware District of Columbia Florida Illinois  
Minnesota Nevada New Jersey New York Pennsylvania Texas Washington



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Robert C. Wood, Esq.  
May 9, 2019  
Page 2

4. Documents sufficient to identify to whom the Claims Administrator distributed Mr. White's monetary award and where Mr. White first deposited the proceeds;
5. An accounting of the award proceeds, detailing any use or transfer of funds and showing where and by whom the proceeds are currently held;
6. Information concerning any other anticipated distributions to Mr. White by the Claims Administrator;
7. Information concerning Mr. White's current assets and liabilities (whether individually or jointly held);
8. Information regarding any significant liabilities or expenses (in excess of \$10,000) anticipated by Mr. White over the next 12 months.

Based on our prior discussions, I anticipate that Mr. White will refuse to comply with most or all of these requests. In the absence of compliance (or a promise of compliance) by the close of business tomorrow, I will seek Judge's Platt's assistance. Should you have any questions or wish to communicate any of the requested information to me over the phone, please reach out to me to discuss.

Very truly yours,

Peter C. Buckley

cc: Christopher C. Popper, Esq.

**WOOD LAW LIMITED**  
**COUNSELLOR & ATTORNEY AT LAW**

May 15, 2019

**VIA EMAIL DELIVERY**

The Honorable Steven I. Platt  
THE PLATT GROUP, INC.  
P.O. Box 6604  
Suite 2420  
Annapolis, MD 21401

Subject: Thrivest Specialty Funding, LLC v. William E. White; Case No. 01-18-0001-476

Judge Platt:

As set forth in his Answering Statement, Mr. White objects to the jurisdiction of the AAA based upon the failure of the Claimant to comply with the dispute resolution provision of the “Non-Recourse Finance Transaction (Sales and Purchase Agreement) dated December 16, 2016 (the “False Assignment”). And he does not, by responding to the Claimant’s correspondence of May 7, 2019, waive, impliedly or otherwise, jurisdictional challenges to the AAA or any Arbiters, or does he otherwise consent to the jurisdiction of the AAA.

**I. The AAA Does Not have Jurisdiction to Adjudicate this Dispute**

The False Assignment expressly requires: (1) 30 days written notice of a dispute; (2) a meeting among the parties to the False Assignment in Philadelphia, PA within 30 days of the receipt of the notice; and (3) the passage of 60 days following the meeting as preconditions to demanding Arbitration.

In relevant portion, Section 6(z) of the False Assignment provides that:

Within thirty (30) days of [written] notice of a dispute, Buyer and Seller agree to meet at an agreed upon location in Philadelphia, PA to attempt to resolve the dispute in good faith without the necessity of moving forward with binding Arbitration through the American Arbitration Association. Should the dispute not be resolved between the parties within 60 days of the above referenced meeting, either party may seek remedies exclusively through a binding arbitration request to the American Arbitration Association and/or one of their representatives.

The Claimant neither provided written notice of a dispute to Mr. White, nor met with him in Philadelphia, PA prior to requesting this Arbitration. The failure of the Claimant to



satisfy and perform these conditions precedent are, among other things, a material breach of the Dispute Resolution provisions of the False Assignment. Accordingly, the AAA does not have jurisdiction to consider this dispute.

## **II. The Claimant is Not Entitled To Relief Under R-38 of the Commercial Arbitration Rules and Mediation Procedures**

Rule 38(b) requires a showing of: (1) a need for “emergency relief”; and (2) a need for emergency relief “on an emergency basis.” Here, the Claimant cannot demonstrate that either are present because, well, neither exist. To be sure, both the United States District Court for the Eastern District of Pennsylvania, *In re: National Football League Players’ Concussion Injury Litigation*, Case No. 2:12-md-02323-AB, and the United States Court of Appeals for the Third Circuit, *In re: National Football League Players’ Concussion Injury Litigation*, Case Nos. 18-1040, 18-1482, 18-1639, 18-2184, 18-2582, 18-3005, have considered and repeatedly denied all similar requests by the Claimant.<sup>1</sup>

The Claimant, in order to meet the standard for emergency relief under R-38(e), must demonstrate “that immediate and irreparable loss or damage shall result in the absence of emergency relief, and that such party is entitled to such relief.” Irreparable loss or damage is that which cannot be remedied with money. It is undisputed that the Claimant is seeking money damages. The Claimant has requested an emergency escrow measure to ensure that, in the event it can ultimately prove it is owed money under the terms of the False Assignment, it will have a fund set aside from which to collect. In so doing, without pointing to any facts which establish an emergency, it speculates that over time its prospects for collecting a judgment might decrease.

The cases the Claimant referenced in its May 7, 2019 correspondence are inapposite. In each instance, the aggrieved party came to the tribunal with known facts that established irreparable harm in the absence of relief. Given that the Claimant can only speculate, and

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<sup>1</sup> On May 3, 2018, *In re: National Football League Players’ Concussion Injury Litigation*, Case No. 2:12-md-02323-AB, the Claimant filed an “Emergency Motion for Limited, Expedited Discovery in Advance of Preliminary Injunction Hearing”(ECF 9957) which was denied. On June 13, 2018, *In re: National Football League Players’ Concussion Injury Litigation*, Case No. 18-1482 Claimant, in file a Motion to Expedite Appeal (Doc. No. 003112955853) (arguing that “there is a serious risk of dissipation that worsens with time) which was denied. On June 29, 2018, *In re: National Football League Players’ Concussion Injury Litigation*, Case No. 2:12-md-02323-AB, Claimant filed a “Motion for Bond Pending Appeal” (ECF 10114-2) (alleging that because “one can reasonably conclude that Mr. White’s medical expenses will mount and his capacity to work will diminish as his ALS progresses” that it “it faces a significant likelihood of irreparable harm) which was denied. On September 11, 2018, *In re: National Football League Players’ Concussion Injury Litigation*, Case Nos. 18-1040, 18-1482, 18-1639, 18-2184, 18-2582, 18-3005, Claimant filed a Motion For the Issuance of a Bond or Escrow Pending Resolution of Appeal (Doc. No. 033113031054) (again making the identical arguments that because “one can reasonably conclude that Mr. White’s medical expenses will mount and his capacity to work will diminish as his ALS progresses” that it “it faces a significant likelihood of irreparable harm) which was denied.

does not have known facts to support its request for emergency relief, it seeks desperately expedited discovery from which it can fish for information that might help it meet the standard. This conduct is improper, however, under R-38. The Claimant must come with known facts which justify a need for emergency relief on an emergency basis - not file the request based upon speculation and then seek discovery to search for them.

**III. On April 26, 2019, *In re: National Football League Players' Concussion Injury Litigation*, Case Nos. 18-1040, 18-1482, 18-1639, 18-2184, 18-2582, 18-3005, the Court made no finding that the False Assignment is enforceable and presumed that it is subject to all claims and defenses of Mr. White.**

During the appellate proceedings,<sup>2</sup> the Claimant argued vigorously that False Assignment did not fall within the purview of the December 8, 2017 and February 20, 2018 orders<sup>3</sup> because the assignment applied to the settlement proceeds rather than the claims. The Claimant was wrong. The Court stated that: “The District Court found that the anti-assignment provision language applied to assignment of proceeds. This is a question of interpretation reviewed for clear error. . . and we identify no clear error. Accordingly, we adopt the District Court’s interpretation and conclude that any true assignments contained within the cash advance agreements - that is, contractual provisions that allowed the lender to step into the shoes of the player . . . were *void ab initio*.” Id at 28.

The Court went on to affirm the District Court’s December 8, 2017 order in so far as it “voided any true assignment set forth in the cash advance agreements.” Id. at 29. The Court also noted that “deciding whether any specific contractual provision is a “true” assignment or *false* one requires examining the language of the specific contract. Id at 29 footnote 13.

The False Assignment purports to be a true assignment but it is demonstrably false.<sup>4</sup> The Court determined that the Claimant could not step into the shoes of a player in order to submit a claim for settlement proceeds to the Claim Administrator. As part of its ruling, the Court stated that “We express no opinion as to the ultimate enforceability of any of the cash advance agreements. . . .We presume that the full array of standard contract defenses

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<sup>2</sup> By their clear terms, the December 8, 2017 and February 20, 2018 orders applied to all assignment agreements entered into by class members, so the District Court necessarily rejected the arguments raised by Thrivest in its opposition . . . To the extent Thrivest attempts to appeal the denial of the motion to withhold, it failed to brief that issue and instead addressed only the December 8, 2017 and February 20, 2018 orders. Any argument a to the order denying the motion to withhold is therefore forfeited. Further, we conclude that Thrivest cannot bootstrap its arguments regarding the December 8, 2017 and February 20, 2018 orders to its July 16, 2018 notice of appeal. Accordingly, we will dismiss as untimely Thrivest’s appeal in case number 18-2582. Id. at 17.

<sup>3</sup> The Orders are attached to Exhibit H and I of the Demand, respectively.

<sup>4</sup> The False Assignment, in various places, including sections 2(c), (2)(d), and 2(f) contains statements indicating that an a true assignment (“Seller has agreed to assign and sell”; “Seller has agreed to assign and sell to Buyer”; Seller absolutely assigns”; “Seller and Buyer intend that this transaction be a true sale, in an abundance of caution, in the events that such sale and assignment ever is characterized as a loan or other financial accommodation and not a true sale”)

will also apply in any subsequent litigation regarding these agreements. As noted by Judge Brody in her December 8, 2017 order, some of the class members are cognitively impaired, and it is possible that some of them lacked the capacity to contract at the time they entered into the agreements.<sup>5</sup> Id at 32.

The Court concluded by making it crystal clear that:

Going forward, the litigation funding companies will be able to pursue, outside of the claims administration process, whatever rights they may continue to have under the cash advance agreement with class members. We offer no opinion as to the companies' prospects for success in enforcing the funding agreements. Indeed our opinion today should in no way suggest that an individual agreement is enforceable. Any questions going to the enforceability of the funding agreements will have to be litigated or arbitrated in the appropriate fora.

Id at 34.

Mr. White has asserted various defenses regarding the enforceability of the False Assignment, including without limitation, failure to perform and satisfy a condition precedent which establishes that the AAA does not have jurisdiction to adjudicate this dispute. By extension, the Arbitrator, lacks jurisdiction to consider this request. Assuming *arguendo* that the AAA has jurisdiction - and it does not - the Claimant can neither demonstrate an emergency nor entitlement to emergent relief under R-38.

Best regards,

/s/ Rob Wood

Robert C. Wood

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<sup>5</sup> The Claimant wrongly concludes that Mr. White has not waived that defense. Counsel for the Class indicated "that the class was not making an argument on appeal that class members lacked contractual capacity." Id. at 32 footnote 16.

**Robert Wood**

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**From:** The Platt Group [info@theplattgroup.com]  
**Sent:** Monday, May 13, 2019 7:16 PM  
**To:** Buckley, Peter C.  
**Cc:** Robert Wood; Reed, Eric E.; Popper, Christopher C.; AAA Matthew Conger  
**Subject:** Re: FW: Thrivest v. White -- Request for Documents and Information (Please Respond by COB on May 10)

Mr. Buckley , Mr. Wood and Mr. Conger , It is 6:20 pm I just returned from a Private Mediation and will be similarly occupied tomorrow until into the evening . If the parties are prepared to agree, I would be willing to speak with Counsel tomorrow evening after 7:00 pm and after hearing argument perhaps dispose of Mr. Buckleys requested preliminary discovery . However I can't help but note the potential if not the immediate practical difficulty in requiring a response to these discovery requests before the scheduled Conference Call Hearing on the next day, Wednesday at 1:30 pm even if I decided to order it . This is particularly true in light of the condition precedent/ jurisdictional issue being raised . Alternatively I suggest / direct dealing with it as a preliminary issue on Wednesday and if the discovery is ordered in whole or in part extending the Hearing to another day in order to address compliance and other issues I leave it to Counsel and Mr. Conger . The Default disposition absent agreement, is to consider this request as a preliminary issue on Wednesday .

Judge Steven I. Platt (Ret.)

The Platt Group Inc.  
P.O. Box 6604  
Annapolis, Maryland 21401

Phone: 410-280-0908  
Fax: 301.780.5528  
Email: [info@theplattgroup.com](mailto:info@theplattgroup.com)

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On Mon, May 13, 2019 at 5:45 PM Buckley, Peter C. <[pbuckley@foxrothschild.com](mailto:pbuckley@foxrothschild.com)> wrote:

Judge Platt –

## 1 AMERICAN ARBITRATION ASSOCIATION

2 - - -

3 THRIVEST SPECIALTY : No. 01-18-0001-4765  
4 FUNDING, LLC, :  
5 Claimant : R-38 Emergency Measures  
6 vs. : of Protection Hearing  
7 :  
8 WILLIAM E. WHITE, :  
9 Respondent :  
10

11 - - -

12 Wednesday, May 15, 2019

13 - - -

14 Emergency Arbitration hearing in  
15 the above-captioned matter was held at the  
16 offices of Fox Rothschild, 2000 Market Street,  
17 20th Floor, Philadelphia, Pennsylvania 19103,  
18 beginning at 1:30 p.m., on the above date, before  
19 DEBRA ANNE GERSTEMEIER, Registered Professional  
20 Reporter and Notary Public of the Commonwealth of  
21 Pennsylvania.

22 - - -

23 ELITE LITIGATION SOLUTIONS, LLC  
24 One Penn Center  
1617 JFK Boulevard, Suite 340  
Philadelphia, Pennsylvania 19103  
www.elitelitllc.com ~ (215) 563-3703

1

2     **A P P E A R A N C E S:**

3

4     THE ARBITRATOR  
5     BY: STEVEN I. PLATT, ESQUIRE (ret)  
6     5 Park Place  
7     Annapolis, Maryland 21401

7

8     FOX ROTHSCHILD, LLP  
9     BY: PETER C. BUCKLEY, ESQUIRE  
10     CHRISTOPHER C. POPPER, ESQUIRE  
11     2000 Market Street, 20th Floor  
12     Philadelphia, Pennsylvania 19103  
13     Telephone: (215) 299-2000  
14     E-mail: pbuckley@foxrothschild.com  
15     --Representing the Claimant

12

13

14     LAW OFFICES OF ROBERT C. WOOD  
15     BY: ROBERT C. WOOD, ESQUIRE  
16     68 North High Street  
17     Building B, Suite 202  
18     New Albany, Ohio 43054  
19     Telephone:  
20     E-mail: rwood@rwoodlaw.com  
21     --Representing the Respondent

18

19     **ALSO PRESENT:**

20     Joseph Genovesi - Thrivest Specialty

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C O N T E N T S

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**TESTIMONY OF:**

PETER C. BUCKLEY

Page Number

By: Mr. Buckley.....25  
By: Mr. Wood.....34

E X H I B I T S

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**EXHIBIT NO.**

**PAGE MARKED**

(No exhibits marked by the court reporter.)

1	<b>DEPOSITION SUPPORT INDEX</b>
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3	Direction to Witness Not to Answer
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7	Request for Production of Documents
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11	Stipulations
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	None
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THE ARBITRATOR: This is the emergency arbitration proceeding/hearing in the case of Thrivest Specialty Funding, LLC versus William E. White, and that is America Arbitration case No. 01-18-0001-476 (sic).

And I'll ask counsel for Thrivest and then for Mr. White to identify themselves now that we have a record, again, and indicate who you represent for that purpose.

MR. BUCKLEY: Thank you, Your Honor.

This is Peter Buckley. I'm here with my colleague Chris Popper. And we also have Joe Genovesi, who is the president of Thrivest, here in the room today.

MR. WOOD: Yes. Thank you, Judge Platt. It's Rob Wood, and I am here on behalf of Mr. White.

THE ARBITRATOR: All right.

1           And I know that Thrivest wanted  
2           Mr. White to be present, but counsel  
3           has indicated that he is not.

4                     Mr. Buckley, you've indicated  
5           that you have co-counsel with you as  
6           well as at least one witness; am I  
7           correct?

8                     MR. BUCKLEY: That's correct,  
9           Your Honor.

10                    THE ARBITRATOR: All right.  
11           There are, obviously, some  
12           preliminary matters. And as you may  
13           know and I'm sure do know because  
14           I've had communications from both  
15           parties through counsel on the  
16           subject, this hearing was set  
17           pursuant to a previous call in which  
18           we set this hearing for this date  
19           and time.

20                    I received via email and  
21           correspondences between that date  
22           and today's date from Mr. Buckley  
23           via email requesting certain  
24           preliminary relief before this

1           hearing. I responded that evening  
2           when I got back from doing what I  
3           was doing with another case, and  
4           indicated that I was available the  
5           next evening if everybody could  
6           agree.

7                       For many reasons, I'm sure,  
8           there was no agreement to convene by  
9           telephone or otherwise at 7:00 p.m.  
10          on Tuesday, last night. And I  
11          understood that and suggested in the  
12          alternative in my response that we  
13          take up as a preliminary matter the  
14          relief requested, particularly since  
15          there didn't appear to be any  
16          practical alternative to that  
17          suggestion.

18                     And so that's where we are  
19          right now. And I'll consider,  
20          Mr. Buckley, and for that matter,  
21          Mr. Wood, any preliminary relief  
22          that you want to pursue before we  
23          get to the substance of the hearing.

24                     MR. BUCKLEY: Thank you, Your

1 Honor.

2 With respect to the Discovery  
3 that was sought, you know, I really  
4 don't want to delay the hearing. I  
5 do want to move ahead with that  
6 today. Frankly, I think the failure  
7 to respond to the Discovery speaks  
8 for itself, as does Mr. White's  
9 failure to appear in response to the  
10 Notice to Attend that we served on  
11 him in advance of this hearing.

12 And so seeing as though Your  
13 Honor has only been appointed to  
14 this date for the purposes of this  
15 emergency motion, you know, I will  
16 reserve right to pursue, obviously,  
17 this Discovery in the  
18 arbitration-in-chief and would ask  
19 that, you know, Your Honor take into  
20 account the lack of transparency in  
21 the sharing of any information in  
22 considering the relief.

23 You know, of course, if Your  
24 Honor thinks that that information

1           would be relevant and that for some  
2           reason, you know, we failed in our  
3           proof because we haven't, as  
4           Mr. Wood points out in his brief and  
5           filing, come forth with specific  
6           facts that we have not been  
7           permitted to discover, we certainly  
8           would request that Your Honor allow  
9           us an opportunity to get that  
10          information, but we think we can  
11          sustain our proof without it and  
12          therefore would intend to proceed.

13                   THE ARBITRATOR: All right.  
14          Mr. Wood, do you want to comment at  
15          all at this point based on that?  
16          And then you can comment if you want  
17          to.

18                   I'm going to note for the  
19          record, because we do have a record  
20          through the court reporter that is  
21          present -- and I'll say to the court  
22          reporter even though he or she --  
23          for the record, who is the court  
24          reporter and from what company?

1 MR. BUCKLEY: Debbie  
2 Gerstemeier. I always have a little  
3 trouble with her last name. And  
4 she's with Elite Court Reporting  
5 here in Philadelphia. We will order  
6 a copy of the transcript, Your  
7 Honor --

8 THE ARBITRATOR: Okay.

9 MR. BUCKLEY: -- and circulate  
10 it after the hearing.

11 THE ARBITRATOR: Thank you.

12 All right. Ms. Gerstemeier,  
13 if you are present, just so I have a  
14 general idea based on Counsel's  
15 representation that he would  
16 circulate the transcript, which  
17 means he's going to order it, how  
18 long do you anticipate -- and I  
19 realize you don't know how long this  
20 hearing will be, but ballpark it, if  
21 you can, on how long it would take  
22 to transcribe these proceedings that  
23 we're having this afternoon and  
24 circulate them?

1 THE COURT REPORTER: Usually  
2 it is 10-14 days, but if you need it  
3 sooner I can certainly get it to you  
4 sooner.

5 MR. BUCKLEY: We'll pay to  
6 expedite it, Your Honor.

7 THE ARBITRATOR: I suspect,  
8 Mr. Buckley, I thought that I would  
9 hear that fairly quickly.

10 I'll let Mr. Buckley negotiate  
11 with you and pay you whatever he  
12 wants to pay you to expedite it, but  
13 I'd suggest in light of the fact  
14 that this is a AAA R-38 we're  
15 proceeding in and it's styled as a  
16 request for emergency relief, that  
17 that would justify the speed,  
18 whatever speed you can proceed at  
19 accordingly. So, we'll do that.

20 Mr. Buckley, I understand your  
21 position. And I haven't heard from  
22 Mr. Wood yet, because he doesn't  
23 know what I'm thinking. But what  
24 I'm going to do, I'm going to note

1           that the decision is as you  
2           requested. We will proceed --  
3           you're not requesting a continuance  
4           of the hearing, if I understand you  
5           correctly.

6                     Do I?

7                     MR. BUCKLEY: Yes, you do,  
8           Your Honor.

9                     THE ARBITRATOR: All right.  
10          And we will therefore proceed unless  
11          Mr. Wood gives me a reason that I  
12          haven't heard to not do so.

13                    And as far as me saying I need  
14          or don't need evidence, my attitude  
15          is or my position is as the  
16          emergency arbitrator that we're  
17          proceeding under AAA rules generally  
18          and in particular R-38, which is the  
19          rule entitled Emergency Measures of  
20          Protection. You'll be the judge at  
21          least initially of whether or not  
22          you have presented sufficient  
23          evidence or proof to get the relief  
24          you are requesting.



1                   I will be rendering a decision  
2                   based on the evidence that's  
3                   presented to me and the record that  
4                   is made at this hearing. What I  
5                   won't be doing, unless you give me a  
6                   reason that I haven't heard so far,  
7                   would be to go back and forth with  
8                   the parties on here's what I need to  
9                   do what you want. I'm not going to  
10                  do that with either Respondent or  
11                  Claimant.

12                  So if you're going forward  
13                  with the hearing, the record will  
14                  further reflect that you reserved -  
15                  and certainly you have the right to  
16                  do that and the record will, of  
17                  course, reflect that - your, in  
18                  effect, withdraw of your request for  
19                  the emergence for the Discovery is  
20                  without prejudice to renewing it at  
21                  any time and further proceedings not  
22                  just with the emergency arbitrator  
23                  but ultimately with the panel or the  
24                  single arbitrator that takes over on

1           the permanent relief or the final  
2           relief requested.

3                   Mr. Wood, if that works for  
4           you or at least you don't object to  
5           it, that's how we're going to  
6           proceed. If you wish to be heard on  
7           any part of what I just said and are  
8           inclined to do so, now is the time  
9           to tell me.

10                   MR. WOOD: Thank you, Your  
11           Honor.

12                   Obviously, I don't have an  
13           objection to them agreeing to move  
14           forward with the hearing absent the  
15           Discovery.

16                   You had indicated -- and maybe  
17           you're going to do that now, Your  
18           Honor. You had indicated during our  
19           call that one of the first things  
20           that you would do during this  
21           hearing is inquire as to your  
22           jurisdiction.

23                   THE ARBITRATOR: Yeah. And  
24           you've raised that as an issue, and

1           Claimant, Thrivest, has addressed it  
2           at least partially in their  
3           submissions.

4                   I'm going to have a full  
5           hearing and allow Thrivest to  
6           present their case, including their  
7           evidence and arguments with regard  
8           to jurisdiction. I'm then going to,  
9           as quickly as possible, I'm going to  
10          ask that the transcript be  
11          distributed in as expedited a manner  
12          as Mr. Buckley suggested he was  
13          paying to do. I would need a copy  
14          of that as soon as possible.

15                  Ms. Gerstemeier, it's helpful  
16          to me if you can send my copy as a  
17          hard copy, just because it's  
18          easier - I'm not necessarily at the  
19          same location as my staff most of  
20          the time - to an address that is as  
21          follows: Judge Steven, S-T-E-V-E-N,  
22          middle initial I, Platt, paren, RET,  
23          retired, 5 Park Place, i.e., like  
24          the Monopoly game, Suite 109,

1           Annapolis, Maryland 21401. If you  
2           can do that UPS or FedEx, that will  
3           aid me in expediting the ruling.

4                   I will then deal with the  
5           request for emergency relief,  
6           including the jurisdictional issues,  
7           based on the record and the evidence  
8           presented and the arguments in this  
9           case and in this hearing and  
10          anything else I have in the file  
11          leading up to this hearing and will  
12          issue a hopefully not  
13          too-longwinded, but nonetheless,  
14          reasoned opinions, as I think that  
15          obviously will not be the last stop  
16          on these issues. And I'll do that  
17          as soon as I can, meaning as soon as  
18          I get what I need to do it, which is  
19          the transcript and the opportunity  
20          to further review the exhibits and  
21          the evidence and the arguments that  
22          are being made at this hearing.

23                   So to answer your question in  
24          a longwinded with fashion, Mr. Wood,

1 I'm going to inquire about it, but  
2 I'm not going to rule on it other  
3 than in the context of a full-scale  
4 ruling on all issues that I think  
5 are necessary.

6 MR. WOOD: Understood, Your  
7 Honor.

8 THE ARBITRATOR: Okay?  
9 Mr. Buckley, that's what I intend to  
10 do. If you want to tell me I should  
11 do something different, let me know,  
12 but otherwise we'll proceed in that  
13 manner.

14 MR. BUCKLEY: It works for me,  
15 Your Honor.

16 THE ARBITRATOR: All right.  
17 Then it's your request for emergency  
18 relief.

19 It's my understanding -- and  
20 I'm a great believer in letting  
21 counsel, particularly on these kinds  
22 of issues and these requests for  
23 emergency/injunctive relief or  
24 otherwise, I'm letting you know --

1           it looks based on what I've read,  
2           which is everything I've gotten,  
3           perhaps not for the last time, but  
4           it appears that my understanding --  
5           and I've read the Third Circuit  
6           opinion as well as the trial court,  
7           the U.S. District Court judge's  
8           opinion that was partially reversed  
9           and partially affirmed. It appears  
10          that the argument -- and I'm only  
11          dealing with the request for  
12          emergency relief, but if a  
13          jurisdictional relief exists, it  
14          exists. Not only for this relief,  
15          but any other. But I'm dealing with  
16          it as an emergency arbitrator.

17                 It appears that the position  
18          of the Respondent is, in a nutshell,  
19          One, there's a jurisdictional issue  
20          because essentially the conditions  
21          precedent in the contract has not  
22          been met or was not met, and  
23          apparently the contention is it  
24          still hasn't been met. And, Two,

1           even if the AAA has jurisdiction for  
2           this or any further proceeding,  
3           besides the jurisdictional issue,  
4           there's an issue of capacity to sign  
5           the contract that is sought to be  
6           enforced.

7                     Is that essentially your  
8           position, Mr. White (sic), on behalf  
9           of your client?

10                    MR. WOOD:    Uh --

11                    THE ARBITRATOR:   Mr. Wood,  
12           rather.   I'm sorry.

13                    MR. WOOD:    Yeah, that's okay,  
14           all right.

15                    Yes, Your Honor.   I think you  
16           stated it correctly.   I think the  
17           initial issue is we do contest the  
18           jurisdiction of the AAA due to the  
19           failure of the condition precedent.

20                    You know, the underlying  
21           defenses, they're set forth in the  
22           answering statement.   The mental  
23           capacity is just one.

24                    So in terms of the R-38, I



1           mean, even if there's jurisdiction,  
2           obviously we don't think the  
3           conditions exist to merit that. So,  
4           I just wanted to make sure you  
5           understood that also.

6                   THE ARBITRATOR: All right.  
7           And, Mr. Buckley, you can tell me as  
8           you go, but you presented - and it's  
9           always appreciated - and articulated  
10          in written form the relief you were  
11          requesting, the R-38 relief.

12                   Is that still the proposed  
13          order, still the relief you're  
14          requesting, or is there something  
15          more or less?

16                   MR. BUCKLEY: That's still the  
17          relief, Your Honor.

18                   THE ARBITRATOR: Okay, good.

19                   Then, Mr. Buckley, you're the  
20          person seeking this relief, so I'll  
21          have you proceed with whatever  
22          evidence documents.

23                   I have various documents, and  
24          I think I went over what I had even

1           during the scheduling conference.  
2           But for the sake of seeing, what I  
3           have received and -- and I  
4           understand the difference between  
5           evidence and argument, but to the  
6           extent that I've received documents,  
7           meaning that I'm looking at the  
8           original, I have the original Demand  
9           for Arbitration, which includes a  
10          Request for Emergency Relief, and I  
11          have exhibits that were attached to  
12          that request which are labeled in  
13          the notebook that is in front of me  
14          A through L.

15                 Is there any objection to my  
16          considering for the purposes of  
17          considering the R-38 relief  
18          requested any of those documents as  
19          evidence in this case?

20                 MR. WOOD:   The Respondent  
21          doesn't object.

22                 THE ARBITRATOR:   Mr. Buckley?

23                 MR. BUCKLEY:   No, Your Honor.

24                 THE ARBITRATOR:   So, I will

1           summarily admit all of the, quote,  
2           exhibits - and, again, I understand  
3           the difference between a pleading  
4           and a document that's submitted as  
5           an exhibit and, therefore,  
6           evidence - the Demand for  
7           Arbitration and Application for  
8           Emergency Relief filed by  
9           Mr. Buckley and his law firm on  
10          behalf of his client Thrivest; and I  
11          will also consider, again, knowing  
12          the difference between pleadings and  
13          evidence, all of the documents  
14          submitted as exhibits and  
15          attachments, which are not a whole  
16          lot different - they're less, but  
17          not conflicting - including the  
18          opinions of the U.S. District Court  
19          and the Third Circuit. I'm also  
20          admitting them.

21                   All of that is admitted  
22          summarily for purposes of this  
23          hearing without any prejudice or any  
24          objection that either party through

1           counsel might have in a future  
2           proceeding. But for this purpose,  
3           they're summarily admitted as  
4           evidence to be considered in  
5           arguments of counsel.

6                   That said, you can assume that  
7           all of that is now in evidence. And  
8           if you wish to argue about it or  
9           have a witness testify about it, you  
10          may do so. Okay?

11                   Mr. Buckley, you're the one  
12          asking for relief, so I'll ask you  
13          to proceed.

14                   MR. BUCKLEY: Thank you, Your  
15          Honor. And with Your Honor's  
16          indulgence, I will take advantage of  
17          the somewhat relaxed nature of the  
18          arbitration proceeding.

19                   You know, certainly if Your  
20          Honor feels it necessary to swear me  
21          in at any point in time, I can do  
22          that. But I have a few things that  
23          I want to just submit in terms of  
24          initially with respect to the

1 condition precedent that's been  
2 discussed on the mediation in  
3 Philadelphia. You know, I just want  
4 to make some representations to Your  
5 Honor.

6 Is that okay to proceed that  
7 way?

8 THE ARBITRATOR: Well, let me  
9 ask Mr. Wood. Essentially, what  
10 you're going to do is make  
11 representations concerning those  
12 issues, and my question to him is:  
13 Do you want him sworn as a  
14 witness --

15 MR. WOOD: Yes, yes.  
16 Absolutely.

17 THE ARBITRATOR: -- and you  
18 may cross-examine, or are you  
19 satisfied that you can make  
20 counter-representations if you wish?

21 MR. WOOD: No, no. I would  
22 like him sworn in.

23 THE ARBITRATOR: All right.  
24 But I gather you do not object to

1           him, quote, testifying after I swear  
2           him in, as long as you can ask him  
3           questions?

4                   MR. WOOD:   As long as I can  
5           ask him questions, that's fine.

6                   THE ARBITRATOR:   All right.  
7           If you don't mind, Mr. Buckley, we  
8           will -- hold on one second.   I have  
9           one thing I have to jump away from  
10          my desk for a second.

11                   (Brief pause.)

12                   Sorry, gentlemen.   I bought a  
13          car.   And I'll maybe hire one of you  
14          to sue the people who sold it to me,  
15          but now I'm back.

16                   All right.   Mr. Buckley, if  
17          you don't mind, please raise your  
18          right hand.

19                   MR. BUCKLEY:   It's up, Your  
20          Honor.

21                               - - -

22                   **PETER C. BUCKLEY**, having been  
23          duly sworn, was examined and testified  
24          as follows:

1 - - -

2 E X A M I N A T I O N

3 - - -

4 THE ARBITRATOR: If you would  
5 state your name, your law firm and  
6 who you represent and your current  
7 business address.

8 MR. BUCKLEY: Peter Buckley.  
9 I am at Fox Rothschild. I represent  
10 Thrivest Specialty Funding. And  
11 we're located at 2000 Market Street  
12 in Philadelphia on the 20th floor.

13 THE ARBITRATOR: All right.  
14 And you wanted to tell me -- and  
15 Mr. Wood is present. And with the  
16 ability to cross-examine under the  
17 terms that we just discussed, which  
18 is the reason you were sworn, if you  
19 want to make representations, you  
20 may do so.

21 Again, we're operating, as  
22 both counsel, all counsel know,  
23 under relaxed rules, under the AAA  
24 rules that apply to these



1           proceedings. And so I will hear any  
2           objections, but my method of dealing  
3           with the objections under relaxed  
4           rules is that if you want to make  
5           them, make them, particularly when  
6           there's a record. I will likely  
7           overrule them without prejudice,  
8           meaning that I have been doing this  
9           for a while, I know what is  
10          admissible and what should be  
11          admitted and not admitted and what  
12          should be a matter of weight. And I  
13          will reserve on those issues until I  
14          do the decision. And if you object,  
15          you can expect your objection to be  
16          dealt with in the reasoned opinion  
17          and issues quoted. All right?

18                       With that in mind,  
19          Mr. Buckley, tell me what you want  
20          to tell me.

21                       MR. BUCKLEY: Thank you, Your  
22          Honor.

23                       THE ARBITRATOR: With the  
24          understanding that you'll be

1 cross-examined by Mr. Wood.

2 MR. BUCKLEY: Understood.

3 The first point I want to  
4 make, Your Honor, this is with  
5 respect to the fact that Thrivest  
6 did not demand a pre-arbitration  
7 mediation in Philadelphia. The  
8 first point I want to make, Your  
9 Honor, is that in part it was due to  
10 timing and in part it was due to the  
11 absence of any meaningful  
12 opportunity at resolution.

13 So with respect to the timing,  
14 on March 19 of 2018, Mr. Wood wrote  
15 to Thrivest and provided the company  
16 with a waiver relinquishing rights  
17 under attempted assignment, which is  
18 a form that the Claims Administrator  
19 had used in the claims  
20 administration process, certainly  
21 prior to the Third Circuit's  
22 decision. And the import of that  
23 form was that if Thrivest signed the  
24 document, it would receive the

1           return of its principal-only in  
2           exchange for relinquishment of all  
3           of its other rights under the  
4           Agreement. And that document, the  
5           waiver deadline was April 12th of  
6           2018. In other words, we had to  
7           submit the waiver by April 12th of  
8           2018 for it to be effective. And  
9           we're supposed to have 30 days, but  
10          we didn't get it from Mr. Wood until  
11          March 19. And so we engaged in some  
12          preliminary discussions with  
13          Mr. Wood that went nowhere, and on  
14          April 11th, 2018 filed the instant  
15          arbitration the day before the  
16          deadline.

17                 Without getting into the  
18          detail of any discussions about  
19          settlement, the offer that we  
20          received, which was accept  
21          rescission and obtain return of  
22          principal only, was communicated to  
23          us by Mr. Wood as the only option.  
24          And after we filed the arbitration

1           and the April 12th, 2018 waiver  
2           deadline passed, Mr. Wood wrote,  
3           among other times, to me on May 4th  
4           of 2018 that, "Thrivest's election  
5           to refuse the rescission offered by  
6           the court constitutes a rejection  
7           that it must now live with." And  
8           that was in the context of Mr. Wood  
9           basically representing that Mr.  
10          White intended to keep the principal  
11          after Thrivest did not accept his  
12          ultimatum to accept rescission by  
13          the April 12th deadline.

14                 You know, throughout, we have  
15          certainly had discussions and been  
16          open to resolution. Those  
17          conversations have never gone  
18          anywhere productive, and so it's our  
19          belief that any pre-arbitration  
20          mediation in Philadelphia would be  
21          futile. Not only because we didn't  
22          have much time to do anything prior  
23          to April 12th or April 11th when the  
24          arbitration was filed, but also

1           because Mr. Wood communicated that  
2           there was really no room to  
3           negotiate and, you know, we weren't  
4           willing to accept the rescission  
5           option.

6                       On May 10, 2019, last Friday,  
7           I wrote an email to Mr. Wood and  
8           recounted some of the history of the  
9           settlement conversations in this  
10          case, including the fact that prior  
11          to the arbitration he told us that  
12          rescission was the only option and  
13          including the fact that Mr. White  
14          after Thrivest did not accept  
15          rescission indicated that he  
16          intended to keep even the principal  
17          and also recounting some of the more  
18          recent discussions we've had about  
19          resolution and basically saying that  
20          for all of those reasons we see no  
21          reason to believe that mediation in  
22          Philadelphia would be anything other  
23          than futile. And if Mr. White's  
24          position should change, he should

1           make an offer that approaches, you  
2           know, balance and the costs of  
3           enforcement, and we would consider  
4           having such a mediation.

5                       I have not received any  
6           response to my May 10, 2019 email  
7           from Mr. Wood, nor has Mr. Wood  
8           requested or indicated an openness  
9           to a mediation in Philadelphia at  
10          any time since we commenced this  
11          arbitration more than a year ago nor  
12          during any of the extensive  
13          proceedings in the district court  
14          and in the Third Circuit.

15                      I will also note that --

16                      THE ARBITRATOR: All right.

17                      MR. BUCKLEY: I will also note  
18          that we'd previously --  
19          understanding that there would be no  
20          agreement reached upon a global  
21          resolution, we'd previously  
22          discussed an escrow arrangement with  
23          Mr. Wood in June of 2018 and  
24          indicated an openness to foregoing

1           the continued accrual of interest if  
2           the money would be set aside. And  
3           Mr. Wood responded by saying that  
4           Mr. White's position has not changed  
5           and he would not agree to even  
6           escrow the disputed funds.

7                       And so, you know, in sum - and  
8           this is probably more argument than  
9           testimony - we think that any  
10          pre-arbitration mediation would have  
11          been futile and therefore is not a  
12          jurisdictional prerequisite for this  
13          proceeding.

14                       That's my testimony.

15                       THE ARBITRATOR: All right.  
16          Anything else? Anything else you  
17          want to tell me in the form of  
18          testimony?

19                       MR. BUCKLEY: Not on that  
20          issue, Your Honor.

21                       THE ARBITRATOR: All right.  
22          Mr. Wood, do you want to  
23          cross-examine on that issue, or any  
24          other for that matter, within the



1 scope of what he just said?

2 MR. WOOD: I do, Your Honor.

3 - - -

4 **CROSS-EXAMINATION**

5 - - -

6 BY MR. WOOD:

7 Q. So, my first question is: Earlier  
8 you mentioned that I communicated  
9 Mr. White's position to be that your only  
10 option was to or Thrivest's only option was  
11 to accept rescission.

12 But wasn't that what the Court said,  
13 Mr. Buckley?

14 A. (Brief pause.)

15 Q. Did you not hear the question?

16 A. No, that's not what the Court said.

17 Q. Okay. So are you saying that the  
18 forms that the Claims Administrator sent did  
19 not give you the right to accept rescission?  
20 Are you saying that that was Mr. White's  
21 position?

22 A. I'm saying that the form certainly  
23 gave us that option. We chose not to accept  
24 it, and we communicated to Mr. White through

1     you that we believe that our agreement --

2         Q.       Well, did --

3         A.       We believe that our agreement --

4         Q.       Well, I guess --

5         A.       We believe that our agreement would  
6       ultimately be enforced by the Third Circuit  
7       and that Mr. White should honor his  
8       obligations under it, and you communicated  
9       to us that Mr. White was not interested in  
10      any resolution other than rescission in  
11      exchange for return of principal.

12        Q.       Again, I just want to be clear. I  
13      think it's a "yes" or "no". I'm looking for  
14      a "yes" or "no" answer.

15                Wasn't rescission --

16                       THE ARBITRATOR: Well --

17   BY MR. WOOD:

18        Q.       Wasn't the recission what the  
19      District Court required Mr. White to tender  
20      to Thrivest?

21        A.       No.

22        Q.       Isn't that what was required?

23        A.       No.

24        Q.       Okay.

1       A.       The District --

2       Q.       Uhm, in my --

3       A.       The District Court said on Page 5 of  
4       6 of its December 8th, 2017 opinion that if  
5       the third-party funder is willing to accept  
6       rescission and execute a valid waiver  
7       relinquishing any claims or rights under the  
8       entire agreement creating the assignment or  
9       attempted assignment, then the Claims  
10      Administrator will be authorized to withhold  
11      from the class member's monetary award the  
12      amount already paid to the class member  
13      under the Agreement and return it to the  
14      third-party funder.

15      Q.       Yeah. I'm not, I'm not sure what  
16      that -- how that -- I guess I just want to  
17      be clear so that Judge Platt understands,  
18      that your statement -- well, let me ask it  
19      to you in the form of a question. Again,  
20      I'll ask you a "yes" or "no".

21              Mr. White did not ask Thrivest to  
22      accept recission of its own volition.  
23      Wasn't it the Claims Administrator that  
24      required he tender that?

1       A.       I don't know what Mr. White decided  
2       to do. I know that you told me that that  
3       was the only thing he was willing to accept.  
4       And despite the fact that others have  
5       honored their contracts and paid the  
6       contractual sum owed through agreement, that  
7       did not happen with Mr. White.

8       Q.       Okay. So, let's move to a different  
9       part of the Agreement.

10               So Section, I think, 6, 6(z), of the  
11       contract, does it not require --

12                       THE ARBITRATOR: When you're  
13       referring to the contract, I'm  
14       assuming you're referring to the  
15       contract with Thrivest.

16                       MR. WOOD: I am. I'm sorry,  
17       Your Honor. That's Exhibit A.

18                       THE ARBITRATOR: Okay. That's  
19       fine. That's what I thought. I  
20       just wanted to make sure I wasn't  
21       coming to the wrong conclusion.

22                       MR. WOOD: Yeah. Thank you  
23       for that clarification.

24

1 BY MR. WOOD:

2 Q. Mr. Buckley, does not the dispute  
3 resolution provision require 30-days written  
4 notice to Mr. White and then a meeting in  
5 Philadelphia within 30 days? And then if  
6 there's no agreement, wouldn't it be another  
7 60 days before you could file or Thrivest  
8 could move forward with arbitration? Isn't  
9 what Provision 6(z) says?

10 MR. BUCKLEY: Your Honor, I'm  
11 certainly happy to defer to the  
12 document. I don't want to engage in  
13 argument.

14 THE ARBITRATOR: I was just  
15 going to say.

16 All right. Let's do this,  
17 Mr. Wood. Either party's counsel  
18 can refer to contract, and I have it  
19 in front of me. I don't need the  
20 witness, whether it's Mr. Buckley or  
21 anyone else, to read me the  
22 contract. And you can certainly  
23 argue that that's what it says.

24 Okay?

1 MR. WOOD: Okay. Well, again,  
2 that is what it says.

3 THE ARBITRATOR: Well, whether  
4 it says that or not, I will look to  
5 the contract to see what it says,  
6 period.

7 MR. WOOD: I understand.

8 So, I do want to ask another  
9 question of Mr. Buckley, which isn't  
10 in the written agreement.

11 BY MR. WOOD:

12 Q. Did you ever receive from Mr. White  
13 any tacit or written notification saying  
14 that he waived any portion of the dispute  
15 resolution provision?

16 A. You said to me that there is no  
17 contract and that the contract doesn't exist  
18 because of what Judge Brody wrote in her  
19 December 8th, 2017 order. And that is  
20 something that's referenced in our --

21 Q. So that --

22 A. That's actually referenced in our  
23 Demand as one of the reasons why we brought  
24 the arbitration, because Mr. White was

1 denying that the Agreement even existed.

2 Q. What date was that, Mr. Buckley?

3 What date was that?

4 A. Well, it was certainly in that time  
5 period between March 19 and April 11, 2018.  
6 It's referenced in paragraph 58 of our  
7 Demand.

8 Q. And so was that after the December 8,  
9 2017 order that voided the Agreement?

10 A. It was after December 8, 2017.

11 Q. Okay. So at that time, he would have  
12 been correct.

13 A. I disagree.

14 MR. WOOD: Well, Your Honor,  
15 you can read. You said you can read  
16 the decisions.

17 THE ARBITRATOR: Yeah. That  
18 will be determined ultimately.

19 MR. WOOD: Okay.

20 BY MR. WOOD:

21 Q. So, yeah, so I just want to make  
22 sure.

23 Other than what you've just said, did  
24 you ever receive any correspondence from



1 Mr. White indicating that he waived these  
2 preconditions under Section 6(z) of the  
3 dispute resolution provision?

4 A. Well, certainly, your correspondence  
5 of March 19, 2018 where you ask Thrivest to,  
6 you know, complete the waiver form; and the  
7 other subsequent conversations where you  
8 indicated that you didn't believe that there  
9 was an agreement that could be enforced  
10 anymore; and indeed in the subsequent  
11 proceedings in front of Judge Platt and  
12 otherwise, Mr. White took the position that  
13 there was no agreement to arbitrate at all.

14 And so, yeah, I think several times  
15 throughout that period Mr. White through  
16 counsel indicated that he didn't believe  
17 that he had any obligations to Thrivest,  
18 including the obligation to mediate or  
19 arbitrate. And I recall proceedings in  
20 front of Judge Platt where, you know,  
21 Mr. Wood simply refused and then class  
22 counsel, you know, sought an injunction that  
23 was ultimately reversed by the Third  
24 Circuit.

1 Q. Okay. So, these dates were all prior  
2 to the April 26th, 2019 Third Circuit  
3 opinion, correct?

4 A. Yes.

5 Q. And my last question really is: You  
6 indicated that there was a rush to file the  
7 Demand April 11th before the form was due.

8 Why was that? What was the rush?

9 MR. BUCKLEY: I'm not sure I  
10 should answer that, Your Honor.  
11 That's sort of my litigation  
12 strategy, you know.

13 MR. WOOD: Well, you stated to  
14 the Court that it was necessary  
15 to --

16 THE ARBITRATOR: Well, then  
17 you can go back into your attorney  
18 capacity and object to the question  
19 if you wish to.

20 MR. BUCKLEY: Objection.

21 THE ARBITRATOR: And the basis  
22 for the objection is?

23 MR. BUCKLEY: That the reasons  
24 why we decided to file on a certain

1           date are protected by the attorney  
2           work product doctrine.

3                   THE ARBITRATOR:   Okay.

4           Mr. Wood, do you want to be heard on  
5           that?

6                   MR. WOOD:   Well, I think  
7           Mr. --

8                   THE ARBITRATOR:   The attorney  
9           work product and the attorney client  
10          privilege are by definition not  
11          relaxed, so tell me why I shouldn't  
12          sustain that objection.

13                  MR. WOOD:   Well, I think  
14          Mr. Buckley opened the door by  
15          stating that his failure to comply  
16          with the conditions precedent were  
17          because there was some deadline or  
18          there was some reason it needed to  
19          be done before April 12th. I mean,  
20          that was his testimony.

21                  THE ARBITRATOR:   All right.  
22          And the --

23                  MR. WOOD:   He opened the door.

24                  THE ARBITRATOR:   -- ruling,

1           Mr. Buckley, you did say that, and  
2           I'll either consider it or I won't.  
3           And I won't if your position is "I  
4           can't tell you what it was because  
5           of attorney/client privilege or  
6           attorney work product."

7                   MR. BUCKLEY: Well, certainly  
8           we felt, Your Honor --

9                   THE ARBITRATOR: You tell me  
10          which one you want to do.

11                  MR. BUCKLEY: Certainly, Your  
12          Honor, we felt that we wanted to  
13          commence the arbitration prior to  
14          the expiration of this ultimatum  
15          that was provided.

16                  THE ARBITRATOR: Okay. That's  
17          your answer, right?

18                  MR. BUCKLEY: Yes, Your Honor.

19                  THE ARBITRATOR: That was the  
20          reason.

21                  MR. BUCKLEY: Well, that and  
22          because we wanted to make sure --

23                  THE ARBITRATOR: I guess.

24                  MR. BUCKLEY: That and because

1           we wanted to make sure that we got  
2           moving as quickly as possible so  
3           that Mr. White didn't dissipate the  
4           assets, a portion of which he had  
5           sold to Thrivent in exchange for a  
6           \$500,000 advance in December of  
7           2016.

8                   THE ARBITRATOR: All right.  
9           Mr. Wood, does that answer your  
10          question?

11                  MR. WOOD: Yes sir. Yes, Your  
12          Honor.

13                  THE ARBITRATOR: Thank you.  
14          Objection is withdrawn.

15                  MR. WOOD: Your Honor, I don't  
16          have any more questions.

17                  THE ARBITRATOR: Mr. Buckley,  
18          any further testimony in light of  
19          the cross?

20                  MR. BUCKLEY: No, Your Honor.

21                               - - -

22                               (WITNESS EXCUSED.)

23                               - - -

24                  MR. BUCKLEY: Next, Your

1 Honor --

2 THE ARBITRATOR: All right.

3 MR. BUCKLEY: -- I'd like to  
4 step down from the stand. And  
5 hopefully Your Honor received an  
6 email from me to Mr. Conger that was  
7 a May 10, 2019 email.

8 THE ARBITRATOR: I did.

9 MR. BUCKLEY: I'd like to  
10 enter into evidence, Your Honor, the  
11 transcript from the Third Circuit as  
12 well as the two videos, links of  
13 which were provided in that email,  
14 as evidence of Mr. White's capacity  
15 to enter into the Agreement in  
16 December 2016 with Thrivest.

17 THE ARBITRATOR: All right.  
18 Mr. Wood, any objection to?

19 MR. WOOD: I'm not sure what  
20 we -- I'm sorry, Your Honor. I'm  
21 not sure what we're referring to.

22 When was it?

23 THE ARBITRATOR: There was an  
24 email received -- well, I got it

1 from Mr. Conger. But Mr. Conger  
2 sent me an email from Mr. Conger  
3 attaching it as an exhibit. And  
4 that was on April 29, 2019 at 10:10  
5 a.m. Now, he's showing a copy to  
6 you as well. Okay?

7 MR. WOOD: April 29th?

8 THE ARBITRATOR: Yeah. And  
9 he's attaching Mr. Buckley's email  
10 and attachments to him.

11 Do you know what I'm talking  
12 about?

13 MR. WOOD: I will see if I can  
14 find it. April 29th, you said?

15 MR. BUCKLEY: Now, the one I'm  
16 looking at, Your Honor, I sent  
17 Mr. Conger an email copying Mr. Wood  
18 on May 10, 2019 attaching the  
19 transcript of the argument in the  
20 Third Circuit and including two  
21 links to videos posted by --

22 THE ARBITRATOR: Right. And  
23 that was the content. Correct, and  
24 that was the content of what I

1 received from Mr. Conger which you  
2 had sent to him.

3 MR. BUCKLEY: Right. So, I'm  
4 offering that into evidence.

5 THE ARBITRATOR: Okay. Again,  
6 Mr. Wood, do you have what we're  
7 talking about?

8 MR. WOOD: No.

9 THE ARBITRATOR: It's  
10 essentially the opinion of the Third  
11 Circuit as well as the District  
12 Court.

13 MR. WOOD: Yes, yes, Your  
14 Honor, yes.

15 THE ARBITRATOR: I'm sure you  
16 got that.

17 MR. WOOD: Yes, Your Honor.

18 THE ARBITRATOR: So the  
19 question is: Do you have any  
20 objection to my admitting those  
21 formally into evidence?

22 MR. WOOD: Well, I mean, for  
23 what purpose? For what purpose are  
24 they being offered?



1 THE ARBITRATOR: For this  
2 hearing.

3 MR. WOOD: I mean, for what  
4 purpose?

5 THE ARBITRATOR: The email to  
6 Mr. Conger, "Please see below  
7 attached. Plaintiff requested AAA  
8 reactivate this matter and request  
9 the arbitrator schedule the R-38  
10 hearing." He then attaches a chain  
11 or sends as a chain his  
12 back-and-forth with Mr. Buckley.  
13 And yourself as well, okay, but I'm  
14 going all the way back to 2018.

15 MR. BUCKLEY: No, Your Honor.  
16 I think you're on a different --

17 THE ARBITRATOR: A Third  
18 Circuit opinion.

19 MR. BUCKLEY: Your Honor,  
20 we're talking about something  
21 different, Your Honor.

22 THE ARBITRATOR: Oh, you're  
23 talking about the May 10th email?

24 MR. BUCKLEY: Yes, Your Honor.

1 THE ARBITRATOR: I got that as  
2 well. I understand, okay.

3 MR. BUCKLEY: That's all I'm  
4 moving into evidence at this point,  
5 Your Honor, is the May 10 email with  
6 the Third Circuit transcript and the  
7 two videos.

8 THE ARBITRATOR: All right.  
9 Any objection to that, Mr. Wood?

10 MR. WOOD: Well, again, I  
11 guess I don't have an objection to  
12 the admission of the Third Circuit  
13 transcript. I mean, it is what it  
14 is.

15 THE ARBITRATOR: All right.

16 MR. WOOD: Are you offering  
17 the posts, the interviews with  
18 Mr. White, and for what purpose?

19 MR. BUCKLEY: To demonstrate  
20 his capacity to enter into the  
21 contract.

22 MR. WOOD: I mean, I don't know  
23 that's relevant to this hearing.

24 MR. BUCKLEY: Would you like

1 me to respond, Your Honor?

2 THE ARBITRATOR: Well, one of  
3 your arguments, one of your  
4 defenses, Mr. Wood, is that he  
5 wasn't competent. And that was  
6 something that Mr. Buckley would  
7 have to prove, particularly since  
8 you raised it. And what he's saying  
9 is he wants me to look at the video  
10 for the purpose of determining  
11 what -- and I may or may not think  
12 it's probative, but he wants me to  
13 look at it because he's submitting  
14 it as evidence that he was of a  
15 capacity.

16 I haven't looked at it. I  
17 know it's there and I will look at  
18 it if I admit it, but that's his  
19 reason for submitting it, I presume.  
20 And the issue would be, if your  
21 objection is it doesn't have  
22 anything to do with this case, then  
23 you'd have to take the position that  
24 it doesn't have anything to do with

1           his capacity. And you've raised  
2           that as an issue.

3                   As I understand, Mr. Buckley,  
4           that's what you're doing; is that  
5           correct?

6                   MR. BUCKLEY: Yes, Your Honor.

7                   THE ARBITRATOR: Okay.

8                   MR. WOOD: Yeah. So I guess I  
9           understood this hearing to be about  
10          whether or not Thrivest can  
11          establish irreparable harm or if  
12          you're saying that they might --

13                   THE ARBITRATOR: Well, if your  
14          position is, even if they could  
15          establish irreparable harm, that he  
16          didn't have the capacity. And  
17          certainly if there was no contract  
18          because he didn't have the capacity  
19          to execute it, then whether they  
20          could have irreparable harm, for  
21          what, breaching a contract that  
22          doesn't exist, as a practical matter  
23          that would be the decision.

24                   MR. WOOD: I understand.

1           That's what we're doing, Your Honor.

2                   THE ARBITRATOR:   Okay.   So you  
3           don't object, if I hear you  
4           correctly, to the video or to the  
5           transcript?

6                   MR. WOOD:   No.

7                   THE ARBITRATOR:   All right.  
8           Without objection, it's admitted.

9                   MR. BUCKLEY:   Okay.   And then  
10          for the same reason, Your Honor,  
11          you've already admitted Exhibit B to  
12          the Demand, but I just want to point  
13          out with respect to the issue of  
14          capacity the physician's statement  
15          of mental competency that was  
16          executed by Kevin Weber, Mr. White's  
17          treating physician, in connection  
18          with the transaction in which he  
19          indicated that at no time has  
20          Mr. White lacked capacity to make  
21          independent legal, medical, and  
22          financial decisions, and that his  
23          ALS has in no way impaired his  
24          ability to make his own legal,

1 medical, and financial decisions.

2 And I understand that that's already  
3 been admitted.

4 THE ARBITRATOR: That's  
5 correct.

6 MR. WOOD: Yeah, that's  
7 correct.

8 MR. BUCKLEY: Next, Your  
9 Honor.

10 MR. WOOD: You can go ahead,  
11 Mr. Buckley.

12 MR. BUCKLEY: Next, Your  
13 Honor, I just wanted to, to the  
14 extent you wanted any evidence of --  
15 you know, we've requested an escrow  
16 that will provide, you know, not  
17 only the amount that's owed today,  
18 but also the amount that will be  
19 owed if this goes through the  
20 foreseeable, you know, arbitration  
21 as well as the attorneys fees that  
22 we're claiming under the agreement.

23 I made some representations to  
24 Your Honor in my submission that I'm

1           prepared certainly to back up, but I  
2           did want to advise Your Honor that  
3           in response to Mr. Wood's request we  
4           have produced what I would describe  
5           as "lightly redacted" copies of all  
6           of our legal invoices in this case  
7           issued to date, including the one  
8           that was issued just the other day.

9                   And Mr. Wood has copies of  
10           those documents. He has agreed to  
11           keep them confidential and has also  
12           agreed that the production of those,  
13           you know, lightly redacted invoices  
14           will not be argued to be a waiver of  
15           the attorney/client privilege.

16                   But, you know, I'll represent  
17           to Your Honor that we've incurred,  
18           on the White matter only we've  
19           incurred, you know, to date over  
20           \$240,000 in legal expenses paid to  
21           Fox Rothschild and, in addition,  
22           another \$8,000 in arbitration  
23           expenses paid to AAA. And so, you  
24           know, to date the legal expense here

1           has been approximately \$250,000,  
2           which we are seeking to recover  
3           under the Agreement's, you know,  
4           fee-shifting provision and certainly  
5           would like Your Honor to consider  
6           that as evidence when considering  
7           this request and in determining the  
8           appropriate amount of any escrow.

9                   THE ARBITRATOR: All right.  
10          Any objection to that, Mr. Wood?

11                 MR. WOOD: Yes, absolutely.

12                 THE ARBITRATOR: I know you  
13          object to the relief. My question  
14          is do you object to the submission  
15          of these documents.

16                 MR. WOOD: Yes, absolutely,  
17          Your Honor. There has not been an  
18          analysis of the legal bill to  
19          determine reasonableness.

20                 As Mr. Buckley pointed out,  
21          there's a lot of redaction within  
22          the, within the invoices.

23                 So, no, I mean, I don't  
24          believe those would be appropriate



1           for the arbitrator to consider as  
2           part of this request.

3                   THE ARBITRATOR: All right.  
4           Well, my ruling will be as I've said  
5           it would be under the relaxed rules;  
6           so I will overrule it without  
7           prejudice, meaning I am noting your  
8           objection to that and will look at  
9           it both as to admissibility and  
10          weight. I'd obviously have to look  
11          at the redactions and so forth and  
12          will detail it in the order to make  
13          a determination on the objection.

14                  MR. WOOD: Your Honor, I would  
15          like to make an additional  
16          objection.

17                  The fee-shifting provision of  
18          the Agreement, Exhibit A that  
19          Mr. Buckley is referencing, first  
20          requires a breach of the Agreement.  
21          And there's been no breach by Mr.  
22          White. There's been no breach, so  
23          any and all the expenses, their  
24          legal fees they're claiming, aren't

1           there as a result of a breach.

2                   THE ARBITRATOR: I understand.

3           Your objection there is that legal  
4           fees shouldn't be considered in  
5           this. If I am going to consider it  
6           and find jurisdiction, that that  
7           shouldn't be part of any relief,  
8           period, for that reason.

9                   Is that a fair statement of  
10          your position?

11                  MR. WOOD: Yes. Yes, Your  
12          Honor.

13                  THE ARBITRATOR: All right.  
14          Well, again, that objection along  
15          with the previous one will be  
16          considered both as to admissibility  
17          objections, but for the time being  
18          I'm overruling it with the idea that  
19          I will be looking at it with both of  
20          those issues in mind.

21                  So go ahead, Mr. Buckley.

22                  MR. BUCKLEY: Your Honor, I  
23          have, I think, just one more piece  
24          of evidence that I want to enter,

1           and then I'm prepared to make  
2           argument.

3                       THE ARBITRATOR: All right.

4                       MR. BUCKLEY: I don't know  
5           that I submitted this yet, but the  
6           transcript of the May 2, 2018  
7           telephonic hearing on the temporary  
8           restraining order wherein class  
9           counsel sought to enjoin this  
10          hearing which had been previously  
11          scheduled for sometime in May 2018  
12          before Judge Brody --

13                      THE ARBITRATOR: Right.

14                      MR. BUCKLEY: On Page 5 of  
15          that transcript, Mr. Seeger, who was  
16          representing Mr. White at the time,  
17          said -- and he was calling him  
18          "Mr. W," to preserve his anonymity,  
19          I guess, but "Mr. W would have to  
20          put up \$750,000, that I can assure  
21          you he does not have. He is going  
22          to be stuck paying their attorneys'  
23          fees." And he says that's No. One.

24                      But in other words, you know,

1           we've been frustrated from getting  
2           much information, if any, from  
3           Mr. White about what he's done with  
4           the award and where it's gone and so  
5           forth. The only representation that  
6           we've had from any attorney  
7           representing Mr. White was  
8           Mr. Seeger, who said that he doesn't  
9           have the money in May of 2018, he  
10          doesn't have \$750,000.

11                     And so, you know, I will send  
12          that to Mr. Conger and submit that  
13          to Your Honor for consideration,  
14          that transcript.

15                     THE ARBITRATOR: And Mr. Wood.  
16          You'll send that to Mr. Wood as  
17          well?

18                     MR. BUCKLEY: Of course, Your  
19          Honor.

20                     THE ARBITRATOR: All right.  
21          And, Mr. Wood, do you want to  
22          preliminarily note any objection to  
23          that or not?

24                     First of all, for my

1 information, Mr. Seeger, is he with  
2 your firm or is with a different  
3 firm, different lawyers?

4 MR. WOOD: He's not, Your  
5 Honor. He serves as class counsel,  
6 you know, for the whole --

7 THE ARBITRATOR: Okay. I want  
8 the record to reflect accordingly.

9 So he was representing  
10 Mr. Wood, or Mr. W, as he put it, in  
11 his capacity as class counsel,  
12 correct?

13 MR. WOOD: That's correct,  
14 Your Honor.

15 THE ARBITRATOR: All right.  
16 Thank you.

17 Any objection to my  
18 considering that transcript?

19 MR. WOOD: Well, to the extent  
20 Mr. Seeger made that comment, he did  
21 not make it, he did not make it as,  
22 you know, individual counsel for  
23 Mr. White.

24 And I would also indicate for

1           the record that as of May, as of  
2           that date, whatever it is -- what  
3           was of the date? Well, you know  
4           what, I'll withdraw that because I  
5           don't know what the date was.

6                   MR. BUCKLEY: May 2nd, 2018.

7                   THE ARBITRATOR: Okay.

8                   MR. WOOD: Okay. Well, I'm  
9           going to assume that Mr. Seeger had  
10          a basis for saying that when he said  
11          it.

12                   THE ARBITRATOR: All right.  
13          So you're not objecting, and  
14          accordingly it will be admitted and  
15          it will be submitted to Mr. Conger  
16          with a copy to Mr. Wood if he  
17          doesn't have it already. And then  
18          it can either be attached to the --  
19          I suspect you're just going to send  
20          it to Mr. Conger and he'll then send  
21          it to me?

22                   MR. BUCKLEY: Yes, Your Honor.

23                   THE ARBITRATOR: And you might  
24          want to put an explanatory, whatever

1 way. If you transmit it online,  
2 just tell him what it is and why and  
3 that it was pursuant to the hearing  
4 and it was admitted without  
5 objection.

6 MR. BUCKLEY: Will do.

7 THE ARBITRATOR: Thank you.  
8 Anything else, Mr. Buckley?

9 MR. BUCKLEY: Well, Your  
10 Honor, I wasn't prepared --

11 THE ARBITRATOR: I'll hear  
12 your argument, but anything other?

13 MR. BUCKLEY: Well, I wasn't  
14 prepared for Mr. White --

15 MR. WOOD: I'm sorry?

16 MR. BUCKLEY: I wasn't  
17 prepared for Mr. White not to  
18 attend. It does strike me that  
19 Mr. Wood could be called as a  
20 witness to testify about, you know,  
21 Mr. White's monetary award and where  
22 that money was paid and where it  
23 stands now. If Mr. Wood will tell  
24 us about that, I think that would be

1 helpful for this record.

2 THE ARBITRATOR: Well, let me  
3 ask Mr. Wood. Let me ask Mr. Wood a  
4 question.

5 Mr. Wood, One -- and this is  
6 just what I want you to know and you  
7 can do. I allowed Mr. Buckley to  
8 testify as a witness. He was sworn  
9 at your request so that you could  
10 cross-examine him.

11 I'm not suggesting that you  
12 need to testify or that you should  
13 testify or that you even want to  
14 testify. That's up to you. And if  
15 Mr. Buckley calls you formally, then  
16 we'll deal with it. But I do want  
17 you to know that you have that same  
18 privilege. In other words, if you  
19 do want to testify and Mr. Buckley  
20 wants you sworn as a witness, I'll  
21 do the same thing I did with him.

22 If you don't want to testify,  
23 that's fine. And then he's still in  
24 his case. If he calls you as a



1           witness, then I'll hear argument on  
2           whether or not you should have to  
3           testify and, if so, to what. And  
4           then we'll go from there.

5                       So, you know, I just wanted  
6           everybody and the record to reflect  
7           that that's how I'm looking at this  
8           situation as it proceeds. According  
9           to Mr. Buckley -- my question to you  
10          is, do you have any further  
11          witnesses? That brought this  
12          discussion forward of do you wish to  
13          call any other witnesses.

14                     MR. BUCKLEY: No.

15                     THE ARBITRATOR: Okay. Do you  
16          have any other witnesses?  
17          Otherwise, I'll ask Mr. Wood if he  
18          has any witnesses. And if he does,  
19          we'll hear them. And if he doesn't,  
20          then I'll be prepared to hear  
21          argument from both sides.

22                     Do you have any other  
23          witnesses?

24                     MR. WOOD: Your Honor, I don't

1           have any witnesses.

2                   THE ARBITRATOR:   Okay.

3           Mr. Wood, that was you, right?

4                   MR. WOOD:    Yes.

5                   THE ARBITRATOR:   That was  
6           Mr. Wood saying he didn't have any  
7           witnesses, right?

8                   MR. WOOD:    Correct.

9                   THE ARBITRATOR:   Mr. Buckley,  
10          do you have any further witnesses?

11                   MR. BUCKLEY:   No, Your Honor.

12                   THE ARBITRATOR:   All right.  
13          Are you gentlemen prepared to argue?

14                   MR. BUCKLEY:   Yes, Your Honor.

15                   MR. WOOD:    Yes, Your Honor.

16                   THE ARBITRATOR:   I'll give you  
17          the option that the court reporter  
18          is going to transcribe the hearing,  
19          and we can do one of two things or  
20          both.  We can have oral argument  
21          right now or I can trigger a written  
22          or a closing argument if you wish in  
23          lieu thereof or in addition thereto  
24          after you get the transcript and

1           have the opportunity to think about  
2           it or research further if you want.

3                   If there's no agreement, then  
4           we'll have oral argument now.

5                   MR. BUCKLEY: We'd like to  
6           proceed now, Your Honor.

7                   THE ARBITRATOR: Would you  
8           like to talk with me without --  
9           okay. Mr. Wood, are you ready to  
10          proceed as well?

11                  MR. WOOD: I would prefer to  
12          do the written. But if there's no  
13          agreement, I'm prepared to go  
14          forward.

15                  THE ARBITRATOR: All right.  
16          Then we'll have oral argument as we  
17          speak.

18                  Mr. Buckley, it's your request  
19          for emergency relief. We'll hear  
20          you, sir.

21                  MR. BUCKLEY: Thank you, Your  
22          Honor.

23                  I think our May 7, 2019 letter  
24          to Your Honor, you know, fairly

1 outlines the arguments, but I think  
2 it's important here, especially  
3 since Mr. Wood focused on the  
4 irreparable harm analysis in his  
5 submission, to focus in on the first  
6 argument, which has nothing to do  
7 with irreparable harm. And that is  
8 that Mr. White in the Agreement  
9 agreed that he would hold the  
10 proceeds of any award, all of the  
11 proceeds, in trust for the benefit  
12 of Thrivest until he satisfied his  
13 obligations to Thrivest under the  
14 Agreement.

15 Mr. White has not done that.  
16 He's violated that trust. He has,  
17 you know, taken those funds and used  
18 them for his own benefit, and that  
19 is a violation of the promises that  
20 he made in the Agreement.

21 In the Agreement, Mr. White  
22 sold to Thrivest a portion of his  
23 award once received. And I think  
24 that's very important, because the

1 Third Circuit has made very clear  
2 that obligations that exist outside  
3 of the Claims Administration process  
4 are not affected by the  
5 anti-assignment provision in the NFL  
6 concussion settlement agreement and  
7 thus may be enforceable in  
8 arbitration or litigation, as the  
9 case may be, which is why we're  
10 here.

11 And so, you know, we're not  
12 asking that Mr. White escrow his own  
13 money. We're asking that he escrow  
14 the money that he agreed to hold in  
15 trust for the benefit of Thrivest.  
16 And that money that is owed under  
17 the Agreement is not his money.  
18 It's Thrivest's money.

19 And so as a matter of fairness  
20 in equity, if we're not allowed to  
21 hold onto our asset until this  
22 arbitration decides whether it's  
23 ours or not, neither should he. And  
24 I think that that trust language in

1           Section 2 of the Agreement and the  
2           caselaw that we cite about, you  
3           know, escrowing disputed property  
4           pending resolution is relevant here  
5           and is an independent basis to award  
6           the escrow that we requested. Which  
7           is actually less than we'd be  
8           entitled to under the Agreement.

9           And I think that's another  
10          important point, Your Honor. We're  
11          requesting an escrow that, you know,  
12          provides us with protection as this  
13          matter proceeds and as interest  
14          continues and legal fees continue to  
15          accumulate. But under the Agreement  
16          Mr. White was not allowed to  
17          distribute to himself any funds, any  
18          of the \$3.5-million award from the  
19          case, until Thrivest's obligations  
20          were satisfied.

21          And so that language and those  
22          promises in the Agreement would  
23          allow Your Honor to order the escrow  
24          of the entire award. But we're not

1           asking for that. We're only asking  
2           for only an amount sufficient to  
3           cover what's owed today, the  
4           attorneys fees and a reserve for  
5           attorneys fees that are going to be  
6           incurred throughout this case and  
7           the additional interest that will  
8           accrue as the arbitration proceeds.

9                   And I will point out that the  
10          arbitration clause contains sort of  
11          an expeditious resolution clause,  
12          which hopefully will be the case.

13                  But that's the first reason  
14          why Your Honor should order the  
15          escrow in the amount that we've  
16          requested, because Mr. White  
17          promised to hold the entire award in  
18          trust, not to distribute any of it  
19          until he satisfied his obligations  
20          to Thrivest. And, indeed, he signed  
21          and authorized and directed Mr. Wood  
22          to do the same in the irrevocable  
23          authorization and directive, which  
24          is Exhibit F to the Demand.

1                   So, that's the first reason.

2                   The second reason, Your Honor,  
3                   is the injunctive relief analysis.  
4                   And I submit here that, you know,  
5                   that the R-38 does not require a  
6                   finding of irreparable harm. It  
7                   only requires the immediate --  
8                   excuse me. It doesn't require the  
9                   finding of likelihood of success on  
10                  the merits, but it requires that you  
11                  find that there is an immediate or  
12                  irreparable loss or damage that  
13                  shall result in the absence of  
14                  relief.

15                  Now, we have no insight  
16                  whatsoever other than Mr. Seeger's  
17                  representations on behalf of  
18                  Mr. White, but Mr. White's failure  
19                  to share any information whatsoever  
20                  about his award, what he's done with  
21                  it, where it is, et cetera, which he  
22                  was required under the Agreement to  
23                  provide to Thrivest through some of  
24                  the covenants, he promised to keep



1           Thrivest up-to-date and to tell them  
2           what was going on, there is a  
3           serious concern that Thrivest will  
4           get to the end of this arbitration  
5           and that its agreement will be  
6           enforced, despite Mr. White's  
7           arguments, and that ultimately  
8           Thrivest will not recover anything  
9           as a result of the funds having been  
10          dissipated.

11                   And, you know, that's a  
12          serious concern here, and it's  
13          exacerbated by Mr. White's refusal  
14          to share any information with this  
15          arbitrator about what has happened  
16          to the funds. And I'll note that  
17          Mr. Wood did not put any evidence on  
18          that there's been anything done to  
19          secure these funds or anything done  
20          to protect Thrivest's interests.

21                   With respect to the likelihood  
22          of success on the merits, you know,  
23          we've heard several arguments  
24          raised. I've addressed them in our

1           May 7 filing, but, you know, the  
2           capacity to contract, you know,  
3           clearly Mr. White not only signed  
4           and initialed the Agreement;  
5           Mr. Wood himself notarized  
6           Mr. White's signature on the  
7           document. There's a certification  
8           of the treating physician that he  
9           had the capacity to enter into this  
10          agreement. And, indeed, after the  
11          December 2016 agreement, Mr. White,  
12          you know, was interviewed on TV and  
13          delivered the invocation at the  
14          memorial service for his football  
15          coach at Ohio State. It was very  
16          eloquent and certainly demonstrates  
17          that he had the capacity to enter  
18          into this contract through which  
19          Thrivest paid him \$500,000 that he  
20          had the use of for several years  
21          before he received any award from  
22          the NFL concussion case in terms  
23          that were clearly disclosed in a  
24          disclosure statement on the first

1 page and an Exhibit B which shows  
2 the amount owed over time.

3 So, clearly, Mr. White had the  
4 capacity to contract.

5 I haven't heard any arguments  
6 about unconscionability or fraud,  
7 but certainly there can be no  
8 argument that this Agreement, which  
9 Mr. Wood notarized, you know,  
10 through which Thrivest paid  
11 Mr. White \$500,000 was not forced  
12 upon him. He certainly had the  
13 right to say "no" and decide to  
14 manage his financial affairs in  
15 other ways while he awaited his  
16 award.

17 And, again, you know, there  
18 was some reference. I haven't heard  
19 Mr. Wood make this argument, but to  
20 the extent that it's referenced in  
21 the Third Circuit and Your Honor has  
22 any questions, you know, it's very  
23 clear that these agreements are not  
24 subject to the usury limitations,

1           because the repayment obligation is  
2           completely contingent upon the  
3           receipt of an award. Which makes  
4           them riskier transactions. And if  
5           Mr. White didn't receive an award,  
6           he would have been able to keep the  
7           \$500,000 that Thrivest advanced to  
8           him without any recourse as to his  
9           other assets. And that makes it  
10          different and, therefore, not alone.  
11          And that's the Obermayer case in the  
12          Third Circuit.

13                 But even if it was alone,  
14          which it's not, the usury limits in  
15          Pennsylvania which governs the  
16          agreement in Ohio which -- where  
17          Mr. White lives, the usury caps  
18          don't apply to transactions in  
19          Pennsylvania over \$50,000 and in  
20          Ohio over \$100,000. And so that is  
21          also not a reason for any defense to  
22          Mr. White's payment obligation.

23                 And then, finally, you know,  
24          Mr. Wood makes this argument in his

1           filing that somehow because  
2           Thrivest's Agreement was not a true  
3           assignment of rights or claims in  
4           the class action or under the class  
5           action settlement, that it's  
6           therefore a false assignment which  
7           is not enforceable. And that is not  
8           the Third Circuit's analysis.

9                   The Third Circuit was saying -  
10          and Your Honor has read the  
11          opinion - that a true assignment  
12          that actually gave Thrivest the  
13          right to stand in the shoes of  
14          Mr. White and obtain the award from  
15          the Claims Administrator on his  
16          behalf, that that was within the  
17          Court's power to invalidate pursuant  
18          to its authority, but that the  
19          Court's power ends when the money  
20          gets paid. And on Page 31 of the  
21          opinion, the Third Circuit makes  
22          clear that the District Court's  
23          authority certainly did not extend  
24          to how class members choose to use

1           their settlement proceeds after they  
2           are disbursed.

3                   And that's exactly what's  
4           going on here. As the Court points  
5           out with respect to Thrivest,  
6           Thrivest's Agreement, on Page 33 of  
7           the decision, "Thrivest's contract  
8           gave it only the right to receive  
9           settlement funds after the funds are  
10          disbursed to a class member. And  
11          the District Court's power over the  
12          funds in the class ends at that  
13          point."

14                   And so the idea that somehow  
15          the promise in paragraph 2(c) of the  
16          agreement to remit payment to  
17          Thrivest in the amount on Exhibit B  
18          to the Agreement within 3 days of  
19          receiving an award from the Claims  
20          Administrator, that is clearly  
21          outside the scope of the  
22          anti-assignment language in the  
23          settlement agreement. And the Third  
24          Circuit has made clear that those

1           rights, if otherwise enforceable in  
2           contract, are enforceable. And  
3           here, you know, we've heard a number  
4           of excuses, but none that I think  
5           are valid excuses. And, therefore,  
6           this contract which Mr. White  
7           signed, initialed every page, and  
8           through which he received \$500,000  
9           in December of 2016 with no  
10          obligation to do anything unless and  
11          until he was paid the proceeds of a  
12          claim in the NFL concussion case is  
13          enforceable.

14                   And, you know, we certainly  
15          have sympathy for Mr. White and an  
16          understanding of the health  
17          challenges that he's facing, but  
18          those were the same health  
19          challenges through which my client  
20          gave him a \$500,000 advance in  
21          December of 2016. And throughout,  
22          he has refused to honor those  
23          obligations, even now that the Third  
24          Circuit has made clear that that

1           repayment obligation is outside the  
2           scope of the anti-assignment  
3           provision in the Agreement and even  
4           despite the fact that, you know,  
5           there's clearly no  
6           unconscionability, fraud, usury  
7           defense here.

8                   And so, you know, we're going  
9           to have to proceed with this  
10          arbitration. We're going to have to  
11          go through and get the arbitrator to  
12          decide this case on the merits.

13                  And I'm not asking Your Honor  
14          to make any of those decisions now.  
15          All I'm asking is that Your Honor  
16          preserve for the time being a  
17          situation where those funds which  
18          are to be held in trust are not  
19          dissipated in the interim. And  
20          there's certainly -- you know, you  
21          don't have to decide whether there  
22          was capacity or how the Third  
23          Circuit's decision is to be  
24          interpreted. All you have to decide



1 is that there's a likelihood that  
2 Thrivest will succeed and that the  
3 funds which Mr. White agreed to hold  
4 in trust, a subset of those, \$1.25  
5 million, which is what we're  
6 requesting, that those be set aside  
7 so that we don't get to the end of  
8 this road and Mr. White get not only  
9 the benefit of Thrivest's \$500,000  
10 advance but all of the proceeds of  
11 the settlement without having any  
12 obligation whatsoever to pay  
13 Thrivest what he promised. And  
14 that's what we're trying to avoid  
15 today.

16 THE ARBITRATOR: Thank you,  
17 sir.

18 Mr. Wood?

19 MR. WOOD: Thank you, Judge  
20 Platt. Thank you, Judge Platt.

21 So, initially, I wanted to  
22 point out that to the extent  
23 Thrivest is claiming that there's an  
24 emergency, there isn't. There's

1           not. Thrivest is in the same  
2           position as most litigants at the  
3           beginning of litigation. There's  
4           always a chance that at the end of  
5           the road you won't be able to  
6           collect.

7                     They haven't been able to  
8           point to any fact, any known fact  
9           that indicates that Mr. White hasn't  
10          made provisions to pay them or isn't  
11          willing to pay them.

12                    Just for Your Honor's  
13          reference, Mr. White did, in fact,  
14          offer to pay them back the 475 plus  
15          a reasonable rate of interest, and  
16          Thrivest said it wasn't interested  
17          in that. And that was just, and  
18          that was just recently.

19                    It also refused the rescission  
20          a couple of years ago, which, I  
21          mean, if you subtract or factor in  
22          the amount of legal fees they say  
23          they've spent on this, it would have  
24          made more sense for them to take the

1           rescission back then.

2                       So this whole idea that there  
3           is some, there is some emergency  
4           that needs to be addressed because  
5           of those decisions in my opinion is  
6           completely meritless.

7                       Again, all litigants are in a  
8           position when they're litigating  
9           that ultimately a judgement -- you  
10          know, you may not be able to  
11          collect.

12                      I also want to point out that  
13          in -- and, Judge Platt, you said you  
14          read the decision. It's my express  
15          understanding from the Third Circuit  
16          opinion that it absolutely made no  
17          finding that any provision, any  
18          provision of Thrivest's Agreement is  
19          enforceable; and that in order to  
20          establish the enforceability of any  
21          portion of the Agreement, it would  
22          need to be determined by either an  
23          arbitrator or a court.

24                      So to the extent that

1           Mr. Buckley pointed to provisions in  
2           the Agreement that he says requires  
3           Mr. White to do certain things,  
4           well, there's no determination that  
5           that's enforceable at all at this  
6           point, none. So part of Mr. White's  
7           willingness to resolve the case by  
8           paying back the 475 plus a  
9           reasonable rate of interest is that  
10          uncertainty, so everyone could, you  
11          know, take the ball and go home.  
12          But we're here.

13                 So, the Third Circuit made  
14          clear that, you know, if Thrivest  
15          wanted to, you know, pursue its  
16          claims, they would certainly be --  
17          it's presumed at least that it would  
18          be subject to Mr. White's defenses.  
19          Mr. White has asserted defenses, as  
20          you're aware.

21                 The failure of conditions  
22          precedent, I think Mr. Buckley's  
23          testimony establishes that Mr. White  
24          didn't waive it, at least expressly.

1           At no time was there contact where  
2           Mr. White said, hey, let's just move  
3           forward with this.

4                   I also did not hear a viable  
5           reason for the need for Thrivest to  
6           file its arbitration in April of  
7           2018.

8                   I think it's also very  
9           important to understand that from  
10          December 8th through April  
11          26th -- excuse me, December 8th of  
12          2017 through April 26th -- uh, April  
13          19th, the Agreement was completely  
14          invalid. Mr. White didn't do it.  
15          Mr. White didn't make the motion.  
16          Class counsel made the motion on  
17          behalf of the class, and the judge  
18          did. All Mr. White did after that  
19          was follow the orders.

20                   Judge Platt, if you look at  
21          both the December 8th and the  
22          February 20th orders, they required  
23          Mr. White to do certain things. The  
24          Third Circuit makes it clear that

1 Judge Brody at the time had  
2 jurisdiction over Mr. White to  
3 require him to do those things. So  
4 to the extent Thrivest has painted  
5 Mr. White as some sort of renegade  
6 who all of a sudden turned tail and  
7 didn't want to pay, it just is not  
8 true. It's not true at all. He  
9 simply did what he was required to  
10 do by the court.

11 And, again, a day after or  
12 whatever it was, the Monday after  
13 the Friday that the decision came  
14 out, I called Mr. Buckley.  
15 Mr. Buckley didn't call me. I  
16 called him to offer him the 475 plus  
17 a reasonable rate of interest. He  
18 said he wasn't interested. I  
19 offered prior to this hearing: Hey,  
20 let's pick a day. Let's see if we  
21 can meet and, you know, mediate this  
22 thing in Pittsburgh. Maybe we can  
23 get it worked out.

24 You know, "We're not

1 interested."

2 All I've heard is: Hey, we  
3 want the maximum amount, the amount  
4 we feel we're due under the  
5 contract, plus attorneys fees.  
6 Otherwise, there's nothing to talk  
7 about.

8 So, again, I think that this  
9 position has created the emergency.  
10 This has created the emergency. In  
11 my estimation, that's not a  
12 reasonable position to take. If you  
13 look -- and I don't know who drafted  
14 the Agreement, but if you look at --  
15 Mr. White certainly didn't draft it.  
16 If you look at the Agreement, the  
17 dispute resolution provision is  
18 really aimed at getting to a fair  
19 resolution or giving the parties a  
20 chance to reach a fair resolution  
21 prior to initiating arbitration.  
22 And that didn't happen. And the  
23 failure of that, you know, Mr. White  
24 submits, is a material breach, is a

1 material breach of this Agreement,  
2 which, you know, is going to cost  
3 both parties money.

4 So moving along, I guess  
5 that's what I want to say about the  
6 Agreement and the actions Mr. White  
7 has taken under the direction of the  
8 courts.

9 Now moving onto the relief  
10 that's being requested, again, you  
11 didn't hear one stitch of evidence  
12 from Thrivest to indicate there's  
13 any irreparable harm. It's simply  
14 saying: Hey, look. We believe  
15 we're going to -- you know, we  
16 believe we'll ultimately succeed.  
17 But by the time that we get there,  
18 Mr. White may not have the money to  
19 pay it.

20 Again, that's not an  
21 emergency. That is not grounds to  
22 request or receive emergency relief.  
23 As I understand it, those  
24 situations, you know, from the cases



1           that were put forward by Thrivest,  
2           the claimants or the petitioners in  
3           those instances came to the tribunal  
4           with known facts that showed people  
5           were embezzling money or stealing or  
6           doing other things. And that's just  
7           not, that's just not the case here.

8                       So, again, Mr. White would  
9           close by saying -- oh, one other  
10          point I want to make clear.

11                      In terms of the mental, in  
12          terms of the capacity to contract,  
13          Mr. Buckley pointed out that -- I  
14          can't remember. It's an exhibit.  
15          It's an exhibit to the Demand. But  
16          Mr. White has a diagnosis that was  
17          made by Dr. Weber, who diagnosed  
18          Mr. White with ALS. Mr. White has a  
19          separate diagnosis for a cognitive  
20          disability that's completely  
21          unrelated to the ALS determination.

22                      So, we're also not asking that  
23          the Court, you know -- or, excuse  
24          me, that Judge Platt make those

1           decisions. We think that's beyond  
2           the scope of this hearing. What  
3           Mr. White is asking at this point is  
4           for Judge Platt to take a look at  
5           the contract and determine that  
6           there has been no -- that Thrivest  
7           did not comply with provision 6(z)  
8           of its Agreement and that that  
9           failure results in AAA not having  
10          jurisdiction and, by extension, you  
11          know, Judge Platt not having  
12          jurisdiction to provide the relief  
13          that's being requested.

14                 But I think we close in the  
15          file that we made today by saying  
16          even if you found that you do have  
17          jurisdiction to hear this, that  
18          Thrivest has fallen short of meeting  
19          the, uh, the standard.

20                 So with that said, I don't  
21          have anything further.

22                 THE ARBITRATOR: All right.  
23          Mr. Buckley, you're the moving  
24          party, and you have the last word

1           for that reason.

2                   Do you have anything further  
3           to argue?

4                   MR. BUCKLEY: Yes. Just two  
5           quick points, Your Honor.

6                   Anything that happened  
7           recently is irrelevant to the  
8           question of whether it would be  
9           futile to demand mediation in  
10          Philadelphia in April of 2018. And  
11          I think we've, you know, set forth a  
12          sufficient record that it was made  
13          very clear to us that not only would  
14          there not be a mediation in April of  
15          2018, but that if we wanted anything  
16          other than, you know, the rescission  
17          and the return of principal, we were  
18          wasting our time because, in  
19          Mr. Wood's words, "there is no  
20          agreement."

21                   When he said "there is no  
22          agreement," there was no mistaking  
23          his point; they were not honoring  
24          anything in the Agreement, any

1           promise, you know, and it didn't  
2           exist.

3                   And then, finally, with  
4           respect to the evidence, you know,  
5           supporting the risk of dissipation  
6           here, you know, we issued a valid  
7           Notice to Attend to Mr. White. He  
8           did not show up. He did not come in  
9           response to a valid Notice to  
10          Attend. And I'll share that with  
11          Your Honor as well, because I don't  
12          know that we've sent that yet. But  
13          we sent a Notice to Attend on May  
14          14, and he's not here today.

15                   He hasn't told us what he did  
16          with the money, and the only thing  
17          we've heard is that Mr. Seeger was  
18          saying he doesn't have the ability  
19          even to escrow \$750,000.

20                   But putting that aside, you  
21          know, the point is that it's not his  
22          asset until he satisfies his  
23          obligation to Thrivest. He agreed  
24          to hold these funds in trust, you

1 know, and he has not done that. He  
2 has violated his trust.

3 And we're asking for less than  
4 what we'd frankly be entitled to  
5 under the Agreement. The Agreement  
6 says you can't distribute any money  
7 to yourself until you pay Thrivest.  
8 He got a \$3.5 million award. We're  
9 saying only set aside 1.25, which  
10 should be plenty and should be more  
11 than enough to secure his  
12 obligations to Thrivest. We'd be  
13 entitled to ask for more, but we  
14 haven't done that, in deference to  
15 him and his current needs.

16 But, again, we have to  
17 remember that this is a case where  
18 we gave this gentleman \$500,000 to  
19 use as he saw fit in December of  
20 2016 and now, 2 1/2 years later, you  
21 know, he has still refused to honor  
22 any of his obligations under the  
23 Agreement and even to show up for an  
24 arbitration to discuss that.

1                   And so we do have legitimate  
2                   concern and Your Honor should impose  
3                   an escrow that will help us get to  
4                   the end of this proceeding without  
5                   having the funds dissipated. And,  
6                   frankly, what I think should happen,  
7                   Your Honor, is, you know -- and this  
8                   is really up to Mr. White, but, you  
9                   know, I've urged this. Pay what's  
10                  undisputed. Let's fight about  
11                  what's disputed, but let's stop  
12                  accruing interest on the portion  
13                  that Mr. White seems to concede now  
14                  that he owes.

15                  Thank you.

16                  THE ARBITRATOR: Thank you.

17                  Anything further, Counsel,  
18                  from anybody? If not, we will  
19                  adjourn the proceedings.

20                  You're going to send,  
21                  Mr. Buckley, two things. One, the  
22                  matter you just mentioned, which is  
23                  in Notice to Attend for the record;  
24                  and, Two, the proceeding, the matter

1           that we mentioned earlier.

2                   Mr. Wood -- and Madam Court  
3           Reporter, if you're still there, do  
4           you have a better idea or the same  
5           idea or a different idea on how long  
6           you think it'll be before the  
7           transcript is prepared and sent out?

8                   MR. BUCKLEY: We'll order your  
9           fastest turnaround.

10                   THE COURT REPORTER: Okay,  
11           okay, yeah. I can probably have it  
12           to her Friday and so it will be to  
13           you this weekend.

14                   THE ARBITRATOR: And you're  
15           going to send it personal delivery  
16           to me, correct? Or Mr. Buckley  
17           will.

18                   THE COURT REPORTER: Yes.  
19           Okay, yeah.

20                   THE ARBITRATOR: Thanks,  
21           ma'am.

22                   Thanks, counsel.

23                   MR. BUCKLEY: Thank you, Your  
24           Honor.

1                   THE ARBITRATOR:   And as soon  
2                   as I can, I'll get to work on the  
3                   decision and you'll have it very  
4                   shortly.

5                   MR. BUCKLEY:   Thank you, Your  
6                   Honor.

7                   MR. WOOD:    Thank you, Your  
8                   Honor.

9                   THE ARBITRATOR:   Thank you.

10                                 - - -

11                                 (Hearing concluded at  
12                   approximately 3:00 p.m.)

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**Robert Wood**

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**To:** Robert Wood  
**Subject:** RE: Thrivest Specialty Funding, LLC v. William E. White - Case 01-18-0001-4765

**From:** Robert Wood <[rwood@rwoodlaw.com](mailto:rwood@rwoodlaw.com)>  
**Date:** May 16, 2019 at 11:20:20 AM EDT  
**To:** AAA Matthew Conger <[matthewconger@adr.org](mailto:matthewconger@adr.org)>  
**Cc:** "Popper, Christopher C." <[cpopper@foxrothschild.com](mailto:cpopper@foxrothschild.com)>, "Reed, Eric E." <[EReed@foxrothschild.com](mailto:EReed@foxrothschild.com)>, AAA Matthew Conger <[matthewconger@adr.org](mailto:matthewconger@adr.org)>  
**Subject:** Re: Thrivest Specialty Funding, LLC v. William E. White - Case 01-18-0001-4765

Matthew:

During the hearing yesterday, I indicated that Mr. Seeger must have had some basis for indicating that Mr. White did not have \$750,000 to escrow during the TRO on May 2, 2018. This will confirm that Mr. White had not received \$750,000 from the Claims Administrator as of May 2, 2018.

Also, it was my recollection from the hearing yesterday that Mr. Buckley confirmed to Judge Platt, in response to a question from him, that he would provide to me a copy of the hearing transcript upon receipt.

His position is that I misunderstood.

Please forward to Judge Platt.

Thanks

Rob

On May 15, 2019, at 3:41 PM, Buckley, Peter C. <[pbuckley@foxrothschild.com](mailto:pbuckley@foxrothschild.com)> wrote:

Mr. Conger, during today's hearing, I committed to sharing the attached Notice to Attend and transcript of a May 2, 2018 TRO hearing in the NFL Concussion Class Action with Judge Platt. Please forward this e-mail to him.

Judge Platt, the reference in the TRO transcript to Mr. White's not having \$750,000 to escrow is at page 5, ln. 22-25. On page 10, Mr. Seeger explains that Mr. White authorized him to represent him at the hearing.

**Peter Buckley**  
Partner  
**Fox Rothschild LLP**  
2000 Market Street

20th Floor  
Philadelphia, PA 19103-3222  
(215) 299-2854 - direct  
(215) 299-2150- fax  
[PCBuckley@foxrothschild.com](mailto:PCBuckley@foxrothschild.com)  
[www.foxrothschild.com](http://www.foxrothschild.com)

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<Notice to Attend Telephonic Hearing-C2-C3.pdf>

<58258049\_1\_Final, TRO Hearing, 5.2.2018.PDF>